TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 73.

THE CANADA SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. GEBHARD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 8, 1880.

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INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate	2	1
Summons	4	2
Complaint	5	2
Order on entering appearance	11	4
Appearance of defendant	13	4
Petition to remove cause to United States circuit court	15	4
Bond on removal of cause to United States circuit court	21	6
Order removing cause to United States circuit court	28	8
Certificate of clerk of supreme court	28	8
Appearance of defendant in United States circuit court	35	9
Answer	37	10
Schedule A (act of Parliament of Canada to authorize and confirm scheme of arrangement of Canada Southern Railway Company)	60	17
Consent waiving trial by jury	86	36
Findings	87	37
Act of Parliament of Canada to authorize and confirm scheme of arrangement of Canada Southern Railway Company	118	46
Judgment	144	47
Opinion of Judge Wallace	147	47
Bill of exceptions	158	50
Assignment of errors	162	51
Bond on writ of error	165	52
Citation	167	53
Acknowledgment of service	168	53

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between William H. Gebhard and The Canada Southern Railway Company, a manifest error hath happened, to the great damage of the said The Canada Southern Railway Company, as is said, and as appears by its complaint, we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 21st day of March, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States the one hundred and fourth.

[SEAL.] JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is allowed.
March 12th, 1880.

SAM'L BLATCHFORD,
Circuit Judge.

2 Service of a copy of the within writ of error this 12th day of March, 1880, is hereby admitted.

PLATT, GERARD & BOWERS,
Attorneys for Defendant in Error.

(Indorsed:) United States Supreme Court. A 268. The Canada Southern Railway Company, pl'ff in error, vs. William H. Gebhard, def't in error. Writ of error to U. S. circuit court. Evarts, Southmayd & Choate, attorneys for pl'ff in error, 52 Wall street.

(Stamp:) U. S. circuit court. Filed Mar. 13, 1880. John I. Davenport, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States for the southern district of New York, in the second circuit, by virtue

of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from four to one hundred sixty-
3 eight inclusive, contain' a true and complete transcript of the record and proceedings had in said court in the case of the Canada Southern Railway Company, plaintiff in error, against William H. Gebhard, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 18th day of August, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the said United States the one hundred and fifth.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

4 *Summons.*

Supreme court, city and county of New York.

WILLIAM H. GEBHARD, PLAINTIFF,
against
THE CANADA SOUTHERN RAILWAY COMPANY,
defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, February 19th, 1879.

PLATT, GERARD & BOWERS,
Plaintiff's Attorneys.

P. O. address and office: No. 54 William st., New York City.

5 New York supreme court, county of New York.

WILLIAM H. GEBHARD, PLAINTIFF,
vs.
THE CANADA SOUTHERN RAILWAY COMPANY,
defendant.

The complaint of the above plaintiff, by Platt, Gerard & Bowers, his attorneys, respectfully shows:

That the plaintiff is a resident of the State of New York, and that the defendant is a foreign corporation existing under the laws of the Dominion of Canada, and have, property within the State of New York.

That heretofore, to wit, on the twentieth day of December, 1873, the defendants made and duly issued under its corporate seal *their* hundred certain bonds or obligations numbered as follows: Six hundred and fifty-five to six hundred and seventy-four inclusive, seven hundred and
6 one to seven hundred and twenty inclusive, seven hundred and seventy-two to seven hundred and eighty-one inclusive, and eight hundred and thirty-nine to eight hundred and eighty-eight inclusive, by

each of which said bonds the said defendants bound themselves to pay to the bearer thereof, on the first day of January, 1877, at the office of the Union Trust Company of New York, the sum of one hundred and five dollars, in gold, with interest semi-annually, in gold, from January 1st, 1874, at the rate of seven per cent. per annum, according to certain coupons in the body of each of said bonds declared to be annexed thereto.

That the said defendant thereupon issued and delivered to this plaintiff, at the city of New York, for value, the said bonds with the said coupons attached, each of which said coupons was for the sum of three $\frac{6\,7\frac{1}{2}}{1\,0\,0}$ dollars, and thereupon the plaintiff became the owner of the aforesaid bonds and of the coupons thereto attached, and is now the owner thereof.

7 That the defendant has made default in the payment of all the aforesaid bonds and of the coupons thereto attached, which became due as follows, to wit, the coupons *in* each of said bonds due the first day of July, 1875; the coupons on each of said bonds due the first day of January, 1876; the coupons on each of said bonds due the first day of July, 1876; the coupons *in* each of said bonds due the first day of January, 1877.

That payment of the principal of said bonds and of each of said coupons has been duly demanded.

That there is now due and owing to the plaintiff for the coupons on said bonds due the first day of July, 1875, the sum of three hundred and sixty-seven $\frac{5\,0}{1\,0\,0}$ dollars; for the coupons due the first day of January, 1876, the sum of three hundred and sixty-seven $\frac{5\,0}{1\,0\,0}$ dollars; for the coupons due the first day of July, 1876, the sum of three hundred and sixty-seven $\frac{5\,0}{1\,0\,0}$ dollars; for the principal of said bonds and the coupons due the

8 first day of January, 1877, the sum of ten thousand eight hundred and sixty-seven $\frac{5\,0}{1\,0\,0}$ dollars.

Wherefore the plaintiff prays judgment against the said defendant for the sum of eleven thousand nine hundred and seventy dollars, with interest on three hundred and sixty-seven dollars and fifty cents, part and parcel thereof, from the first day of July, 1875; and on three hundred and sixty-seven dollars and fifty cents, part and parcel thereof, from the first day of January, 1876; and on three hundred and sixty-seven dollars and fifty cents, part and parcel thereof, from the first day of July, 1876; and on ten thousand eight hundred and sixty-seven dollars and fifty cents, part and parcel thereof, from the first day of January, 1877, together with the costs of this action.

PLATT, GERARD & BOWERS,
Pl'ff's Att'ys, 54 William st., New York.

9 CITY AND COUNTY OF NEW YORK, *ss:*

William H. Gebhard, being duly sworn, deposes and says that he is the plaintiff in the above-entitled action; that the foregoing complaint is true of his own knowledge, except as to those matters which are therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

(Signed) WILLIAM H. GEBHARD.

Sworn to before me this 19th day of February, 1879.

HENRY C. BOWERS,
Notary Public, N. Y. Co.

10 (Indorsed:) N. Y. supreme court. William H. Gebhard ag'st The Canada Southern Railway Company. Copy, summons and complaint.

11 At a special term of the supreme court of the State of New York held in and for the city and county of New York, at the court-house in said city, on the 28th day of March, 1879.

Present, Hon. Abraham R. Lawrence, justice.

WILLIAM H. GEBHARD
against
THE CANADA SOUTHERN RAILWAY COMPANY.

Upon reading and filing the annexed notice of appearance of the defendant in the above-entitled action by Evarts, Southmayd & Choate, its attorneys, it is ordered that the said appearance be, and the same hereby is, duly entered therein.

12 (Indorsed:) New York supreme court, city & county of New York. William H. Gebhard vs. The Canada Southern Railway Co. Order entering appearance. Evarts, Southmayd & Choate, def't's att'ys, 52 Wall st., New York.

13 New York supreme court, city and county of New York.

WILLIAM H. GEBHARD
against
THE CANADA SOUTHERN RAILWAY COMPANY.

GENTLEMEN: Please take notice that we are retained by and hereby appear for the Canada Southern Railway Company, the defendant in the above-entitled action, and demand that all papers in said action be served upon us at our office at number 52 Wall street, in the city of New York.

Dated New York, March 10th, 1879.

Yours, &c.,

EVARTS, SOUTHMAYD & CHOATE,
Defendant's Attorneys.

Office and post-office address: No. 52 Wall st., New York city.

To Messrs. PLATT, GERARD & BOWERS,
Plaintiff's Attorneys.

14 (Indorsed:) New York supreme court, city and county of New York. William H. Gebhard vs. The Canada Southern Railway Company. Notice of appearance. Evarts, Southmayd & Choate, def't's att'ys, 52 Wall street, New York.

Due and timely service of a notice of appearance, of which the within is a copy, is hereby admitted.

PLATT, GERARD & BOWERS.

NEW YORK, *March* 11, 1879.

15 To the honorable the supreme court of the State of New York in and for the city and county of New York:

The petition of the Canada Southern Railway Company, a corporation

created and organized under and by virtue of the laws of the Dominion of Canada, respectfully showeth :

That heretofore, and on or about the twentieth day of February, 1879, a suit of a civil nature at law was brought in this court by William H. Gebhard as plaintiff against your petitioner as defendant; that, as your petitioner is informed and believes, the said plaintiff at the time of the commencement of said suit was and has ever since been, and now is, a citizen of and resident in the State of New York, residing at the city of New York, in said State, and that your petitioner at the time of the commencement of said suit was and has ever since been and now is a corporation created and organized and existing under and by virtue of the laws of the Dominion of Canada and a subject of the Queen of the United Kingdom of Great Britain and Ireland; that the said suit was brought for the recovery by the said Gebhard against your petitioner of the sum of eleven thousand nine hundred and seventy dollars, with interest on three hundred and sixty-seven dollars and fifty cents, parcel thereof, from the first day of July, 1875, and on three hundred and sixty-seven dollars and fifty cents, other parcel thereof, from the first day of January, 1876, and on three hundred and sixty-seven dollars and fifty cents, other parcel thereof, from the first day of July, 1876, and on ten thousand eight hundred and sixty-seven dollars and fifty cents, the remainder thereof, from the first day of January, 1877, as stated and set forth in the complaint of the plaintiff therein; that the said petitioner denies any liability for the said sum or any part thereof; that the said suit is a suit of a civil nature at law in which there is a controversy between a citizen of a State and a foreign subject, to wit, between the plaintiff aforesaid, a citizen of the State of New York, and your petitioner, a corporation created and organized and existing under and by virtue of the laws of the Dominion of Canada, and a subject of the Queen of the United Kingdom of Great Britain and Ireland, and that the matter in dispute in said suit exceeds, exclusive of costs, the sum or value of five hundred dollars; that there has been no trial of said suit, nor any term at which the same could be tried, and that the said suit is still pending undetermined in this court.

16

17

Wherefore your petitioner prays for the removal of the said suit into the circuit court of the United States to be held in the district where such suit is pending, to wit, into the circuit court of the United States for the southern district of New York, in the second circuit, and makes and files with this petition a bond with good and sufficient surety for its entering in such circuit court on the first day of its next session a copy of the record in such suit, and for paying all costs that may be awarded by the said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, and also for its there appearing and entering special bail in such suit if special bail was originally requisite therein.

18

And your petitioner prays this honorable court to accept said petition and bond and proceed no further in such suit.

And your petitioner will ever pray, &c.

THE CANADA SOUTHERN RAILWAY COMP'Y,
[SEAL.] By E. A. WICKES, *Vice-Pres't.*

EVARTS, SOUTHMAYD & CHOATE,
Attorneys for Defendant.

STATE OF NEW YORK,
City and County of New York, ss:

E. A. Wickes, being duly sworn, deposes and says that he is the vice-president of the Canada Southern Railway Company, the petitioner
19 described in and which has executed the foregoing petition; that he has read the said petition and knows the contents thereof, and that the same is true, of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes the same to be true; and further saith not.

E. A. WICKES.

Sworn to before me this 27th day of March, 1879.

FREDERIC B. JENNINGS,
Notary Public (15), *New York Co.*

20 (Indorsed:) New York supreme court. William H. Gebhard vs. The Canada Southern Railway Co. Copy, petition. Evarts, Southmayd & Choate, att'ys for def't, peti.

21 Know all men by these presents that we, the Canada Southern Railway Company, a corporation created and organized and existing under and by virtue of the laws of the Dominion of Canada, as principal, and E. A. Wickes and Cornelius Vanderbilt, both of the city of New York, as sureties, are held and firmly bound unto William H. Gebhard, of the city of New York, his executors, administrators, and assigns, in the sum of one thousand dollars, lawful money of the United States, to be paid to the said William H. Gebhard, his executors, administrators, or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-seventh day of March, one thousand eight hundred and seventy-nine.

Whereas the above-named William H. Gebhard has heretofore and on or about the twentieth day of February, 1879, brought a suit of a civil
22 nature at law in the supreme court of the State of New York, in and for the city and county of New York, against the Canada Southern Railway Company above named, which suit is still pending and undetermined in said court;

And whereas the said The Canada Southern Railway Company intends, simultaneously with the filing of this bond, to file its petition in the said suit in such State court for the removal of such suit into the circuit court of the United States to be held in the district where such suit is pending, to wit, the circuit court of the United States for the southern district of New York, in the second circuit, according to the provisions of the acts of Congress in such case made and provided:

Now, therefore, the condition of this obligation is such that if the said petitioner, the Canada Southern Railway Company, shall enter in the said circuit court of the United States for said southern district of New
23 York on the first day of its next session a copy of the record in such suit and shall pay all costs that may be awarded by the said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, and shall also there appear and enter special bail in such suit if special bail was originally requisite therein, then the

above obligation shall be void, but shall otherwise remain in full force and virtue.

[CORP. SEAL.] THE CANADA SOUTHERN RAILWAY COMP'Y.,
By E. A. WICKES, *Vice-Pt.*
E. A. WICKES. [SEAL.]
C. VANDERBILT. [SEAL.]

CITY AND COUNTY OF NEW YORK, *ss:*

E. A. Wickes, one of the obligors in the foregoing bond, being duly sworn, deposes and says that he is a resident of and householder within the State of New York, and is worth the sum of two thousand dollars
24 over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution; and further saith not.

E. A. WICKES.

Sworn to before me this twenty-seventh day of March, 1879.
FREDERIC B. JENNINGS,
Notary Public, New York Co.

CITY AND COUNTY OF NEW YORK, *ss:*

Cornelius Vanderbilt, one of the obligors named in the foregoing bond, being duly sworn, deposes and says that he is a resident of and freeholder within the State of New York, and is worth the sum of two thousand dollars over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution; and further saith not.

C. VANDERBILT.

Sworn to before me this twenty-seventh day of March, 1879.
25 FREDERIC B. JENNINGS,
Notary Public (15), *New York Co.*

CITY AND COUNTY OF NEW YORK, *ss:*

On this twenty-seventh day of March, in the year eighteen hundred and seventy-nine, before me personally appeared E. A. Wickes, the vice-president of the Canada Southern Railway Company, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resided in the city of New York; that he was the vice-president of the Canada Southern Railway Company, and knew the corporate seal of said company; that the seal affixed to the foregoing instrument was such corporate seal; that it was so affixed thereto by the order and direction of the board of directors of said company, and that he thereupon subscribed his name thereto as vice-president by the like order and direction.

FREDERIC B. JENNINGS,
Notary Public (15), *New York Co.*

26 CITY AND COUNTY OF NEW YORK, *ss:*

On this twenty-seventh day of March, in the year eighteen hundred and seventy-nine, before me personally appeared E. A. Wickes and Cornelius Vanderbilt, to me known to be the individuals described in and who executed

the foregoing instrument as sureties, and severally acknowledged to me that they executed the same.

FREDERIC B. JENNINGS,
Notary Public (15), *New York Co.*

27 (Indorsed:) Dated March, 1879. The Canada Southern Railway Company vs. William H. Gebhard. Copy, bond on removal. Evarts, Southmayd & Choate, att'ys for def't.

28 At a special term of the supreme court of the State of New York for the city & county of New York, held at the court-house in the city of New York on the 28th day of March, 1879.

Present, Hon. Abraham R. Lawrence, justice.

WILLIAM H. GEBHARD
vs.
THE CANADA SOUTHERN RAILWAY COMPANY.

Upon reading and filing a copy of the complaint in this action, and the notice of appearance of the defendant, and the petition of the Canada Southern Railway Company, the defendant in said action, praying for the removal of said suit into the circuit court of the United States to be held in the district where such suit is pending, to wit, into the circuit court of the United States for the southern district of New York, pursuant
29 to the act of Congress of the United States in such case made and provided;

And it duly appearing by said petition, and also by the said complaint herein, to the satisfaction of this court, that the present suit is a suit of a civil nature at law, and was brought in this court by the said William H. Gebhard, who, at the time of the commencement thereof, was, and has ever since been and now is, a citizen of and resident in the State of New York, as plaintiff, against the said The Canada Southern Railway Company, which was at the time of the commencement of said suit, and has ever since been and now is, a corporation created and organized and existing under and by virtue of the laws of the Dominion of Canada, and a subject of the Queen of the United Kingdom of Great Britain and Ireland; and it further appearing to the satisfaction of this court, as aforesaid, that the matter in dispute in said suit exceeds, exclusive of costs, the sum or value of five hundred dollars, and that it is a suit be-
30 tween a citizen of a State and a foreign subject, to wit, between a citizen of the State of New York and a subject of the Queen of the United Kingdom of Great Britain and Ireland, and that there has been no trial of said suit, nor any term at which the same could be tried, and the said petitioner having made and filed with said petition a bond with good and sufficient surety for its entering in said circuit court, on the first day of its next session, a copy of the record in such suit, and for paying all costs that may be awarded by the said circuit court, if said circuit court shall hold that such suit was wrongfully or improperly removed thereto, and also for its there appearing and entering special bail in such suit if special bail was originally requisite therein, such bond being a bond executed by said petitioner as principal and E. A. Wickes and Cornelius Vanderbilt as sureties, which is duly approved and filed:

Now, upon motion of Evarts, Southmayd & Choate, attorneys
31 for said petitioner—

It is ordered that said petition and bond be, and the same are hereby, accepted by this court, and that this court will proceed no further in said suit.

And it is further ordered that the said cause be, and the same is hereby and by the proceedings aforesaid, removed into the circuit court of the United States for the southern district of New York, in the second circuit.

32 (Indorsed:) N. Y. supreme court. William H. Gebhard vs. The Canada Southern Railway Co. Order. Evarts, Southmayd & Choate, def't's attorneys, 52 Wall st., N. Y.

33 STATE OF NEW YORK,
City and County of New York, ss:

I, Hubert O. Thompson, clerk of the said city and county, and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original record on file in my office, and that the same is a correct transcript therefrom and of the whole of such original record.

In witness whereof I have hereunto subscribed my name and affixed my official seal this fourth day of April, 1879.

[L. S.] HUBERT O. THOMPSON, *Clerk.*

34 (Indorsed:) New York supreme court. William H. Gebhard vs. The Canada Southern Railway Company. Copy, record. Evarts, Southmayd & Choate, defendant's attorneys, 52 Wall street, New York. U. S. circuit court. Filed Apr. 7, 1879. John I. Davenport, clerk.

35 United States circuit court, southern district of New York.

WILLIAM H. GEBHARD
against
THE CANADA SOUTHERN RAILWAY COMPANY.

To JOHN I. DAVENPORT, Esq.,
Clerk U. S. circuit court, so. dist. of New York:

SIR: Please take notice that we are retained by the defendant as its attorneys herein, and enter our appearance accordingly.

New York, April 7th, 1879.

Yours, etc.,
EVARTS, SOUTHMAYD & CHOATE,
Defendant's Attorneys, 52 Wall street, New York City.

36 (Indorsed:) U. S. circuit court. W. H. Gebhard vs. Canada Southern R'way Co. Notice of retainer. Evarts, Southmayd & Choate, def't's att'ys, 52 Wall st. U. S. circuit court. Filed Apr. 7, 1879. John I. Davenport, clerk.

37 *Answer.*

In the circuit court of the United States for the southern district of New York.

THE CANADA SOUTHERN RAILWAY COMPANY
ads.
WILLIAM H. GEBHARD.

And now comes the Canada Southern Railway Company, the defendant in the above-entitled action, by Evarts, Southmayd & Choate, its attorneys, and answers the complaint therein as follows, that is to say:

First. It admits that the defendant is a foreign corporation created and organized by and under the laws of the Dominion of Canada for the purpose of constructing a railroad in said Dominion, and having its principal places of business there. It denies that it has property within the State of New York, and as to whether the plaintiff is a resident of the State of New York has no knowledge or information sufficient to form a belief.

38 It admits that at or about the time in that behalf stated in the complaint it made and issued certain bonds of the tenor and effect in that behalf stated in the complaint, but as to whether the same were issued or delivered to the plaintiff, or whether the plaintiff ever became the owner of the said bonds or any portion thereof, or of the coupons thereto attached, or is now the owner thereof, the defendant has no knowledge nor information sufficient to form a belief, and it therefore denies the allegations of the complaint in that behalf.

It denies that it has made default in the payment of the said bonds and coupons, and that there is now due and owing to the plaintiff any amount whatever thereon.

Second. And for a further and separate defence the said defendant alleges:

I. That the defendant is a foreign corporation duly incorporated

39 by and under and subject to certain statutes of the Parliament of the Dominion of Canada, and that under the powers conferred by the said several statutes relating thereto it constructed a line of railway in the province of Ontario, in the said Dominion of Canada, from a point in the township of Bertie, near the village of Fort Erie, passing through the town of St. Thomas, to a point in or near the town of Amherstburg, in the county of Essex, and also to a point on the river St. Clair, in the township of Moore, in the county of Lambton, and the defendant hereby makes profert of the several statutes aforesaid and prays that the same may be taken as a part of this its answer.

II. That the defendant did, for the purposes of its said undertaking, borrow under the provisions of one of the said statutes, entitled the railway act, 1868, certain moneys, and did, on or about the 2nd day of January, 1871, at Fort Erie, in the province of Ontario, in the Dominion

40 aforesaid, at the time and place in *in* that behalf mentioned in the complaint, make, execute, issue, and deliver bonds therefor in an amount in the aggregate within the sum of nine millions of dollars, and to secure the payment of the said bonds with interest did execute to William Lawrence Scott and Kenyon Cox, as trustees, a mortgage or deed of trust,

dated the 15th day of December, 1870, of all of the said company's railway, lands, tolls, revenues, and property.

III. That the defendant did also for the purposes of its undertakings borrow further sums, and did execute to William Dowd and Martin Luther Sykes a second mortgage, dated the 15th day of March, 1875, of all its said lands, tolls, revenues, and property to secure the issue of second-mortgage bonds of the company to an amount in the aggregate not exceeding five millions of dollars.

IV. That the defendant heretofore and prior to the 31st day of December, 1873, became unable to pay interest or other moneys secured
41 under the said bonds, and the defendant was further indebted in large sums of money for debts contracted in the course of its business and by way of guaranty for other railway companies with which it is connected, and further monies were required to be raised and expended in the purchase of additional rolling stock so as to increase the earnings of the defendant's railway; that for matured and unpaid interest on its said mortgage bonds and for interest to accrue thereon it did, at or about the time in that behalf in the complaint mentioned make, and issue to the holders of the coupons representing such interest and to the parties entitled to receive such interest on its mortgage bonds, *make and issue* certain bonds of the tenor and effect in that behalf set forth in the complaint, and that if the plaintiff holds or ever held the bonds and coupons in the complaint described, or any of them, the same were issued as aforesaid
42 and were received by the plaintiff for such interest on its said mortgage bonds, and for no other or different consideration.

V. That in this condition of the defendant's affairs a joint committee composed of three directors of the defendant's company and three other persons, holders of the said bonds, and especially of the said first-mortgage bonds, and representing themselves and other large owners of the bonds of the defendant and said connecting companies, after full consideration of all the circumstances, and upon the guaranty of the New York Central and Hudson River Railroad Company, hereinafter mentioned, did submit to the defendant and to the said bondholders a scheme of arrangement of the affairs of the defendant, which was approved of by the defendant at a meeting of the directors thereof held on the 28th day of September, 1877.

VI. That said scheme of arrangement so approved of was and is as follows, that is to say:

43 "Scheme of arrangement proposed to the bondholders of the Canada Southern Railway Company and to the bondholders of connecting lines.

"At a meeting of the board of directors of the Canada Southern Railway Company, held on the 28th day of September, 1877, a report was presented from a joint committee, consisting of James Tillinghast, Augustus Schell, and E. D. Worcester on behalf of this company, and John W. Ellis, Sidney Dillon, and Abram B. Baylis on behalf of the owners of the bonds of the Canada Southern and connected companies, submitting a plan of adjustment of the bonded debt of the companies, which was embodied in a memorandum, as follows:

"New issue of fourteen million dollars thirty-year bonds, bearing three

per cent. interest for three years, and five per cent. thereafter, guaranteed as to interest for twenty years by the New York Central and Hudson River Railroad Company. The first coupon to be payable 1st July, 1878. The new bonds to be exchanged for bonds now outstanding on the basis mentioned below.

44 "The mortgage to secure the new bonds to be made upon the Canada Southern road. The bridge bonds already issued shall, as they are taken up, be deposited with the trustees named in the new mortgage as further security to the holders of the bonds under said mortgage.

	Old bonds outstanding.	New bonds to be issued.
Canada South'n, 1sts, @ 100	8,703,000 00	8,703,000 00
Canada Southern Bridge, 1sts, @ 100	833,000 00	833,000 00
Canada South'n, 2nds, @ 31½	2,044,189 39	643,919 65
Erie & Niagara, 1sts, @ 50	453,000 00	226,500 00
Toledo, Canada South'n & Detroit, 1sts, @ 70	1,407,737 50	985,416 25
Michigan Midland & Canada, 1sts, @ 25	262,010 00	65,502 50
Reserve new bonds for purposes of company		2,542,661 60
		14,000,000 00

The report of this committee was accepted, and its plan of refunding, as set forth in the foregoing memorandum, was adopted by the board as a basis of an arrangement to be proposed to the bondholders. This plan was subsequently approved and adopted by the board of directors of the New York Central and Hudson River Railroad Company.

45 For the purpose of carrying out this proposed compromise the board adopted the following provisions, and directed its executive committee to take the necessary steps to lay them before the bondholders and secure the acceptance of the same:

"First. That the sum of fourteen million dollars in new bonds of this company be issued, and that the same be secured by mortgage, to be executed by the company to Augustus Schell and Cornelius Vanderbilt, as trustees, upon the railroad, roadway, lands, tolls, revenues, and other property of the company.

"Second. That such new bonds shall be coupon bonds, each being for the sum of one thousand dollars, payable on the 1st day of January, 1908, at the office of the Union Trust Company of New York, in the city of New York, with interest in the mean time payable at the same place semi-annually, on the 1st days of January and July, at the rate of five per cent. per annum, except during the first three years, when the rate
46 of interest shall be three per cent. per annum. Each bond, in order to be obligatory, shall be countersigned by the said Union Trust Company.

"Third. That the interest upon such new bonds is to be guaranteed by the New York Central and Hudson River Railroad Company for and during the period of twenty years, from the 1st day of January, 1878, and in case of any default in payment of such interest by this company the said guarantee shall be entitled to be repaid with interest the amount advanced by it for such payment before the payment of any dividend upon shares in the capital stock of this company.

"Fourth. That the trustees under the mortgages of the Canada Southern Railway Company, the Canada Southern Bridge Company, the Erie and Niagara Railway Company, the Toledo, Canada Southern and Detroit Railway Company, and the Michigan Midland and Canada Rail-
47 road Company be requested to take such steps and execute such conveyances as may be necessary for transferring to and vesting in new trustees the respective properties held by them upon the trusts contained in the several indentures creating the same.

"Fifth. That the said issue of new bonds shall be applied for the purposes following, viz:

"1. The redemption and final cancellation of the first and second mortgage bonds of this company and all coupons and bonds for interest thereon.

"2. The purchase for this company of eight hundred and twenty-three thousand dollars in mortgage bonds of the Canada Southern Bridge Company.

"3. The purchase for this company of the mortgage bonds respectively issued by the Erie and Niagara Railway Company, the Toledo, Canada Southern and Detroit Railway Company, and the Michigan Midland and Canada Railroad Company.

48 "4. The settlement of the floating debt and other obligations of the company.

"5. For acquiring further equipment and for such other purposes of the company as the directors shall find necessary.

"Sixth. That the Union Trust Company of New York is hereby constituted trustee for the custody of the old bonds and coupons from time to time received for new bonds, and such old bonds and coupons shall be held by the said Union Trust Company and disposed of as follows:

"1. The old bonds and coupons of the Canada Southern Railway Company shall be held by the said trust company as security for the new issue pending conversion, and when the said new mortgage shall have become a first lien on the property of the Canada Southern Railway Company, then to be delivered to the company to be cancelled.

"2. The bonds and coupons of the Canada Southern Bridge Com-
49 pany shall be delivered by the said trust company to the trustees under said new mortgage to be held by them by way of additional security for the said new issue of bonds, but subject to the right of this company to deal with said bonds or to take proceedings thereon as the directors may think best, reserving always the benefits of any such disposition or proceedings as such additional security in lieu of said bonds; or the said bonds may become the absolute property of this company, in whole or in part, according as this company may resolve not to issue the like amount of its new bonds under the said mortgage, or in case this company may at any time think fit to cancel the like amount of such new bonds.

"3. The bonds and coupons of the Erie and Niagara Railway Company, the Toledo, Canada Southern and Detroit Railway Company, and the Michigan Midland and Canada Railroad Company are from time to time, as received by the said Union Trust Company, to be delivered over to this company as its own property absolutely.

50 "Seventh. That the president of this company is authorized to give from time to time receipts to the holders of such bonds and coupons

as agree to this company's proposals, and deliver up their said bonds and coupons to the said Union Trust Company, and such receipt shall certify the amount of the new issue to which each holder is entitled, and shall be countersigned by the said Union Trust Company. Each holder is further required, concurrently with such receipt, to sign his consent to the appointment of the new trustees under the indenture securing his said bonds; and the holders of the first and second mortgage bonds of this company are also further required to give their written assent to an application to the Canadian Parliament for confirming this arrangement.

"Eighth. That the respective indentures of mortgage under which the bonds of all the several railway companies herein before mentioned (excepting this company) are now secured shall continue
51 in full force, and that the respective indentures under which the first and second mortgage bonds of this company are now also secured shall subsist as valid and existing securities for the said new issue bonds until the said arrangement for the extinguishment of the said original issues is finally carried out.

"The executive committee has adopted the form of receipt or certificate to be given bondholders depositing their bonds and coupons with the Union Trust Company, in accordance with the seventh section of the foregoing provisions. Upon the issue of such certificate bondholders will be required to deposit, together with their bonds, all coupons, interest bonds, and other evidences of interest unpaid thereon."

VII. The defendant further alleges that in pursuance of the said scheme of arrangement the indenture of mortgage for the purpose of securing the said proposed new issue of first-mortgage bonds was, on the 31st day of October, 1877, executed by the defendant, whereby the Canada Southern Railway, its undertaking and property, were conveyed to
52 Augustus Schell and Cornelius Vanderbilt, trustees, as therein mentioned, a copy of which mortgage with certificates endorsed thereon is set out in Schedule A attached to the act of Parliament of Canada, hereinafter mentioned; and in further pursuance of the said arrangement the New York Central and Hudson River Railroad Company, by their agreement dated the 25th February, 1878, and duly executed under the corporate seal of the said company, did covenant with the defendant's company that the said New York Central and Hudson River Railroad Company should and would from time to time, when requested so to do, execute under its corporate seal upon each of the said bonds forming the said new issue as described in the said indenture of mortgage of the 31st October, 1877, a guaranty for interest set forth in said proposed arrangement; and the defendant further alleges that in response to the said proposal holders of the several descriptions of bonds herein before mentioned to large amounts respectively accepted the same and assented to the said scheme by depos-
53 iting their respective bonds with the Union Trust Company of New York, and by their express consents thereto in writing.

And the defendant shows that up to the 5th day of March, 1878, the holders of seven thousand three hundred and thirty-two bonds in number of the said original first-mortgage bonds of the Canada Southern Railway Company, secured by the said indenture of the 15th day of December, 1870, and being more than three-quarters of the whole number of the said bonds heretofore issued, that is to say, eight thousand seven hundred and three, under said

mortgage, did in the aggregate assent in writing to the said scheme, and that the holders of one thousand five hundred and ninety in number of the second-mortgage bonds of the Canada Southern Railway Company, secured by the said indenture of the 15th day of March, 1875, and being more than three-quarters in number of the whole amount heretofore issued, that is to say, two thousand and twenty-nine in the aggregate, did also assent in writing to the said scheme.

And the defendant further shows that the said scheme of arrange-
54 ment was also on the 3rd day of January, 1878, at a special general meeting of the shareholders of the Canada Southern Railway Company, specially called on that day for that purpose, assented to by the holders of shares in the aggregate to the number of 108,132 shares out of the total capital stock of 150,000 shares, and being more than two-thirds of the whole number of shares.

VIII. And the defendant further alleges that thereupon this defendant, by its petition to the governor-general, Senate, and House of Commons, in the Dominion of Canada, in Parliament assembled, setting forth the above-mentioned facts, applied for an act of the said Parliament to authorize and confirm the said scheme of arrangement and to make the same binding and effectual to all intents against and in favor of the defendant's company and all holders of the said original first-mortgage bonds of the said company secured by the said indenture of the 15th day of December, 1870, and of all coupons and bonds for interest thereon, and also all holders
55 of the said second-mortgage bonds of the company secured by the said indenture of the 15th day of March, 1875, and of all coupons thereon, and such proceedings were had upon the said petition of the said defendant that the said Parliament of the Dominion of Canada, upon full consideration of the several matters, questions, rights, and interests involved, and in the exercise of its complete jurisdiction and lawful power in the premises, did in its *its* wisdom, on the 16th day of April, 1878, pass an act entitled "The Canada Southern arrangement act, 1878," whereby it was, among other things, enacted as follows: "The said scheme (meaning the scheme herein before set forth), subject to the conditions and provisoes in this act contained, shall be deemed to have been assented to by all the holders of the original first-mortgage bonds of the company secured by the said recited indenture of the 15th day of December, 1870, and of all coupons and bonds for interest thereon, and also by all the holders of the said sec-
56 ond-mortgage bonds of the company secured by the said recited indenture of the 15th day of March, 1875, and of all coupons thereon, and also by all the shareholders of the Canada Southern Railway Company, and the hereinbefore-recited arrangement shall be binding upon all the said holders of the first and second mortgage bonds and coupons and bonds for interest thereon respectively, and upon all the shareholders of the company," a copy of which act of the said Parliament is hereunto annexed and marked "Schedule A," and the defendant makes profert thereof and asks that the same may be taken as a part of this its answer.

IX. And the defendant further alleges that heretofore and on or about the fifth day of June, 1878, the guaranty of the New York Central and Hudson River Railroad Company, mentioned in the said scheme of arrangement and in the said act of Parliament, were duly approved of at a special general meeting of the shareholders thereof called for that

57 purpose, and that a certificate to that effect of the security of such company has been published in the Canada Gazette as by said act required.

X. The defendant further alleges that the said several bonds in the plaintiff's complaint mentioned, together with the respective coupons thereon, and of which the plaintiff alleges himself to be now the holder, were and are bonds issued for interest upon the mortgage bonds secured by the said indenture of the 15th day of December, 1870, and that the plaintiff, if such holder, or whoever else was or is the holder of such bonds and coupons, by force of the said act of Parliament of Canada is to be deemed to have expressly agreed to the terms set forth in the said scheme of arrangement and is now bound to *to* deliver up and surrender his said bonds and coupons to the Union Trust Company of New York, to be cancelled, receiving in lieu thereof the amount of the new issue of bonds to which, under the terms of the said arrangement, he was entitled.

58 And the defendant further shows that the said act, and such agreement of the plaintiff is, at law and in equity, a full satisfaction and discharge of all liability of the defendant upon the said bonds and coupons alleged to be held by the plaintiff, and of all causes of action thereon. That the defendant is ready and willing, and has offered, and hereby again offers to perform and fulfil all the terms of the said arrangement and of the said act to be performed on its part which the plaintiff, if the holder of the said bonds and coupons in the complaint mentioned, is entitled to have performed and fulfilled, and to deliver to him such amount of the said issue of new bonds, with their coupons and a guaranty of interest by the New York Central and Hudson River Railroad Company, as the plaintiff, under the terms of the said arrangement and act, is entitled to receive in respect to the said bonds and coupons alleged to be held by him.

59 Wherefore the defendant prays that the said complaint may be dismissed, and that it may have judgment against the plaintiff with costs.

EVARTS, SOUTHMAYD & CHOATE,
Defendant's Attorneys.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

Cornelius Vanderbilt, being duly sworn, doth depose and say that he is the treasurer of the Canada Southern Railway Company, the defendant in the foregoing answer named; that he has heard said answer read and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes the same to be true.

C. VANDERBILT.

Subscribed and sworn to before me this 26th day of May, 1879.

[L. S.] W. J. VAN ARSDALE,
Notary Public (17), *N. Y. Co.*

60 *Schedule A, referred to in the foregoing answer.*

Act of the Parliament of the Dominion of Canada, passed in the forty-first year of the reign of Her Majesty Queen Victoria. [Coat of arms.] Chapter 27. An act to authorize and confirm the scheme of arrangement of the Canada Southern Railway Company. Ottawa: Printed by Brown Chamberlin, law printer to the Queen's most excellent majesty. Anno Domini 1878.

61 [Coat of arms.]

41 Victoria.

CHAP. 27.—An act to authorize and confirm the scheme of arrangement of the Canada Southern Railway Company. [Assented to 16th April, 1878.]

Preamble. Whereas the Canada Southern Railway Company (hereinafter called the company) hath by its petition represented the following:

That the company, under the powers conferred by the several statutes relating thereto, constructed a line of railway in the province of Ontario, from a point in the township of Bertie, near the village of Fort Erie, passing through the town of St. Thomas to a point in or near the town of Amherstburg, in the county of Essex, and also to a point on the river St. Clair, in the township of Moore, in the county of Lambton;

And that the company did, for the purposes of its undertaking, borrow, under the provisions of "The railway act, 1868," and did issue bonds for, an amount in the aggregate within the sum of nine millions of dollars, and to secure the payment of the said bonds with interest did execute to William Lawrence Scott and Kenyon Cox as trustees a mortgage, dated the fifteenth day of December, one thousand eight hundred and seventy, of all the lands, tolls, revenues, and property of the company;

And that the company did also, for the purposes of its undertaking, borrow further sums, and did execute to William Dowd and Martin Luther Sykes a second mortgage, dated the fifteenth day of March, one thousand eight hundred and seventy-five, of all its said lands, tolls, revenues, and property to secure the issue of second-mortgage bonds of the company to an amount in the aggregate not exceeding five millions of dollars;

And that the company hath been unable to pay certain interest or other moneys secured under the said bonds, and the same are now in de-

62 fault, and the company is further indebted in large sums of money for debts contracted in the course of its business and by way of guarantee for other railway companies with which it is connected, and further moneys are required to be raised and expended in the purchase of additional rolling stock so as to increase the earnings of the company, and for other purposes of the company;

And that in this condition of the company's affairs a joint committee, composed of three directors of the company and three other persons representing themselves and other large owners of the said bonds of the company, and of the said connecting companies, after full consideration of all the circumstances, and upon the guarantee of the New York Central and Hudson River Railroad Company hereinafter mentioned, did

submit a scheme of arrangement of the company's affairs which was approved of by the company at the meeting of the directors thereof held on the twenty-eighth day of September, one thousand eight hundred and seventy-seven;

And that the said scheme of arrangement so approved of by the directors of the company was and is as follows, that is to say:

1. That the sum of fourteen millions of dollars in new bonds of the company be issued, and that the same be secured by mortgage to be executed by the company to Augustus Schell and Cornelius Vanderbilt, as trustees, upon all the lands, tolls, revenues, and other property of the company;

2. That such new bonds shall be coupon bonds, each being for the sum ofone thousand dollars, payable on the first day of January, one thousand nine hundred and eight, at the office of the Union Trust Company of New York, in the city of New York, with interest in the mean time, payable at the same place semi-annually on the first days of January and July, at the rate of five per centum per annum, except during the first three years, when the rate of interest shall be three per centum per annum. Each bond in order to be obligatory shall be countersigned by the said Union Trust Company;

3. That the interest upon such new bonds is to be guaranteed by the New York Central and Hudson River Railroad Company for and during the period of twenty years from the first day of January, one thousand eight hundred and seventy-eight, and in case of any default in payment of such interest by the company the said guarantor shall be entitled to be repaid with interest the amount advanced by it for such payment before the payment of any dividend upon shares in the capital stock of the company;

4. That the trustees under the respective mortgages following, that is to say:

(1.) Canada Southern Railway Company, dated 15th December, 1870, and chattel mortgages dated, 25th October, 1873, 16th December, 1874, 24th February, 1875, 21st February, 1876, and 14th February, 1877,

63 (2.) Canada Southern Railway Company second mortgage, dated 15th March, 1875,

(3.) Canada Southern Bridge Company, dated 10th December, 1873,

(4.) Erie and Niagara Railway Company, dated 23rd May, 1873,

(5.) Toledo Canada Southern and Detroit Railway Company, dated 1st July, 1872, and

(6.) Michigan Midland and Canada Railroad Company, dated 26th May, 1873,

be requested to take such steps and execute such conveyances as may be necessary for transferring to and vesting in new trustees the respective properties held by them upon the trusts contained in the several indentures creating the same.

5. That the said issue of new bonds shall be applied for the purposes following, viz:

(1.) The redemption and final cancellation of the first and second mortgage bonds of the company and all coupons and bonds for interest thereon;

(2.) The purchase for the company of eight hundred and thirty-three

thousand dollars in mortgage bonds of the Canada Southern Bridge Company;

(3.) The purchase for the company of the mortgage bonds respectively issued by the Erie and Niagara Railway Company, the Toledo, Canada Southern and Detroit Railway Company, and the Michigan Midland and Canada Railroad Company;

(4.) The settlement of the floating debt and other obligations of the company, and

(5.) For acquiring further equipment and for such other purposes of the company as the directors may find necessary.

6. That the Union Trust Company of New York is hereby constituted the trustee for the custody of the old bonds and coupons from time to time received for new bonds, and such old bonds and coupons shall be held by the said Union Trust Company and disposed of as follows:

(1.) The old bonds and coupons of the Canada Southern Railway Company shall be held by the said trust company as security for the new issue pending conversion, and when the said new mortgage shall have become a first lien on the property of the Canada Southern Railway Company, then to be delivered to the company to be cancelled;

(2.) The bonds and coupons of the Canada Southern Bridge Company shall be delivered by the said trust company to the trustees under the said new mortgage, to be held by them by way of additional security for the said new issue of bonds, but subject to the right of the company to deal with the said bonds, or to take proceedings thereon, as the directors may think best, reserving always the benefits of any such disposition or proceedings as such additional security in lieu of the said bonds; or the
64 said bonds may become the absolute property of the company in whole or in part, according as the company may resolve not to issue the like amount of its new bonds under the said mortgage, or in case the company may at any time think fit to cancel the like amount of such new bonds;

(3.) The bonds and coupons of the Erie and Niagara Railway Company, the Toledo, Canada Southern and Detroit Railway Company, and the Michigan Midland and Canada Railroad Company are from time to time, as received by the said Union Trust Company, to be delivered over to the company as its own property absolutely;

7. That the president of the company is authorized to give from time to time receipts to the holders of such bonds and coupons as agree to the company's proposals, and deliver up their said bonds and coupons to the said Union Trust Company; and such receipts shall certify the amount of the new issue to which each holder is entitled, and shall be countersigned by the said Union Trust Company. Each such holder is further required concurrently with such receipt to sign his consent to the appointment of the new trustees under the indentures securing his said bonds, and the holders of the first and second mortgage bonds of the company are also further required to give their written assent to an application to the Canadian Parliament for confirming this arrangement;

8. That the respective indentures of mortgage under which the bonds of all the several railway companies hereinbefore mentioned (excepting this company) are now secured shall continue in full force, and that the

respective indentures under which the first and second mortgage bonds of the company are now also secured, shall subsist as valid and existing securities for the said new issue of bonds until the said arrangement for the extinguishment of the said original issues is finally carried out;

And that in pursuance of the said scheme of arrangement the indenture of mortgage for the purpose of securing the said proposed new issue of first-mortgage bonds was on the thirty-first day of October, one thousand eight hundred and seventy-seven, executed by the company, whereby the Canada Southern Railway, its undertaking, and property were conveyed to Augustus Schell and Cornelius Vanderbilt, trustees as therein mentioned, a copy of which mortgage, with certificates endorsed thereon, is set out in the Schedule A attached to this act; and that holders of the several descriptions of bonds hereinbefore mentioned to large amounts have assented to the said scheme by depositing their respective bonds with the Union Trust Company of New York and by their express consents thereto in writing;

And whereas it further appears that the holders of seven thousand three hundred and thirty-two bonds in number of the said original first-mortgage bonds of the Canada Southern Railway Company, secured by the said indenture of the fifteenth day of December, one thousand eight hundred and seventy, and being more than three-fourths of the whole number of the said bonds heretofore issued, that is to say, eight thousand seven hundred and three, have in the aggregate assented in writing to the said scheme, and that the holders of one thousand five hundred and ninety in number of the said second-mortgage bonds of the Canada Southern Railway Company, secured by the said indenture of the fifteenth day of March, one thousand eight hundred and seventy-five, and being more than three-fourths in number of the whole amount heretofore issued, that is to say, two thousand and twenty-nine, have in the aggregate also assented in writing to the said scheme;

And whereas the said scheme of arrangement was also, on the third day of January, one thousand eight hundred and seventy-eight, at a special general meeting of the shareholders of the Canada Southern Railway Company, specially called on that day for that purpose, assented to by the holders of shares in the aggregate to the number of one hundred and eight thousand one hundred and thirty-two shares out of the total capital stock of one hundred and fifty thousand shares, and being more than two-thirds of the whole number of shares;

And whereas it is expedient that the said scheme should be confirmed and be made binding and effectual to all intents against and in favor of the Canada Southern Railway Company and all parties assenting thereto or bound thereby;

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Arrangement mentioned in the preamble and in Schedule B, confirmed.

1. The scheme of arrangement of the Canada Southern Railway Company in the preamble mentioned and set forth in the Schedule B to this act is hereby authorized, and the same and the provisions thereof shall be binding and effectual to all intents against and in favor of the Canada Southern Railway Company and all parties assenting to or bound thereby, as provided by the fourth section of this act, so soon as the hereinbefore-mentioned guarantee of the New York Central and

Hudson River Railroad Company has been approved of at a special general meeting of the shareholders thereof, called for that purpose, and a certificate to that effect of the secretary of such company has been published in the Canada Gazette, and such publication shall be prima facie evidence of such approval.

Subject to following provison; bonds to be a first charge on the undertaking.

2. The bonds to be used under or by virtue of the said recited arrangement shall, together, be and become, subject to the provisions of the next following section, a first charge over all the undertaking, railway works, rolling stock, and other plant of the Canada Southern Railway Company, including its interest in the Canada Southern Bridge Company, but nothing in this act or in Schedule A contained, shall be construed to empower the company to mortgage its corporate rights or franchises, or its fuel or supplies, the property of the company in Canada.

66 Exception.

Working expenses to be a first charge on revenue.

2. The revenues and earnings of the company shall, before any payment of principal or interest on any of the said bonds, be chargeable with the payment of working expenses, as hereinafter defined, that is to say, the expression "working expenses" shall mean and include all expenses of maintenance of the railway and of the stations, buildings, works, and conveniences belonging thereto, and of the rolling and other stock and movable plant used in the working thereof; and also all such tolls, rents, or annual sums as may be paid in respect of railways, railway bridges, or tunnels, premises, warehouses, wharves, or other property used by, leased to, or held by the company; or in respect of the hire of steam ferry vessels, engines, carriages, or waggons let to the company; rent, charges, or interest on lands belonging to the company, purchased but not paid for, or not fully paid for; and also all expenses of, and incidental to, working the railway and the traffic thereon, including stores and consumable articles; also rates, taxes, insurance, and compensation for accidents or losses; also all salaries and wages of persons employed in and about the working of the railroad and traffic, and all office and management expenses, including directors' fees, agency, legal, and other like expenses, and generally all such charges, if any, not above otherwise specified (and no other), as in the case of English railway companies are usually carried to the debit of revenue, as distinguished from capital account; provided, however, that nothing herein contained shall give the company any further right to lease or use any railway or other property other than as the company can lawfully do at the time of the passing of this act, and also that nothing herein contained shall give to the owners of any railway or other property used or leased by the company any further or other rights against the company, its property, or earnings, than such owners may at any time lawfully have therefor.

Working expenses defined.

Proviso as to powers of leasing.

Application of bonds and proceeds thereof.

3. The company shall apply the bonds to be issued under the said arrangement for the purposes set forth therein, and the sum of two million five hundred and forty-two thousand six hundred and sixty-one dollars and sixty cents, or such amount of the said bonds as may be requisite, shall be set apart and disposed of, and the proceeds applied by the company in paying and discharging the debts or liabilities of the company (other than to bondholders or upon bonds guaranteed by the company); and such of the said debts as have been incurred and were

held on the twelfth day of March, one thousand eight hundred and seventy-eight, in Canada, for working expenses, as hereinbefore defined, or
67 in respect of the user of the international bridge, shall, if not disputed, be paid within three months after the passing of this act, and if disputed, shall be paid within three months after final judgment or decree obtained thereon; and until paid such claims shall be and remain a first lien and charge upon the proceeds of the said bonds set apart as aforesaid to the amount of two millions five hundred and forty-two thousand six hundred and sixty-one dollars and sixty cents, and upon the tolls and revenues of the said railway, and may be enforced in any court of competent jurisdiction by the appointment of a receiver; and any of the said bonds to be issued as aforesaid, or the proceeds thereof which may remain unapplied after satisfying all the purposes mentioned in the said arrangement, may be applied to the general purposes of the company.

Application of any bonds that may remain unapplied.

Scheme to be held to have received the assent of all bond and shareholders.

4. The scheme, subject to the conditions and provisoes in this act contained, shall be deemed to have been assented to by all the holders of the original first-mortgage bonds of the company, secured by the said recited indenture of the fifteenth day of December, one thousand eight hundred and seventy, and of all coupons and bonds for interest thereon, and also by all the holders of the second-mortgage bonds of the company secured by the said recited indenture of the fifteenth day of March, one thousand eight hundred and seventy-five, and of all coupons thereon, and also by all the shareholders of the Canada Southern Railway Company, and the hereinbefore recited arrangement shall be binding upon all the said holders of the first and second mortgage bonds and coupons, and bonds for interest thereon, respectively, and upon all the shareholders of the company.

Offices, &c., to remain in Canada.

5. The principal departmental and other offices and the workshops of the said company shall be, and continue to be, in Canada.

Short title.

6. This act may be cited as "The Canada Southern Arrangement Act, 1878."

SCHEDULE A.

This indenture, made this thirty-first day of October, in the year of our Lord one thousand eight hundred and seventy-seven, between the Canada Southern Railway Company, a body politic and corporate under the laws of the Dominion of Canada, hereinafter called "The Railway Company," of the first part, and Augustus Schell and Cornelius Vanderbilt, of the city and State of New York, United States of America, hereinafter called "The Trustees," of the second part:

68 Whereas the railway company, under the powers conferred by the several statutes relating thereto, constructed a line of railway in the province of Ontario from a point in the township of Bertie, near the village of Fort Erie, passing through the town of St. Thomas, to a point in or near the town of Amherstburg, in the county of Essex, and also to a point on the river St. Clair, in the township of Moore, in the county of Lambton;

And whereas the said company did, for the purposes of its undertaking, borrow under the provisions of the railway act, and issued bonds for an

amount in the aggregate within the sum of nine millions of dollars, and, to secure the payment of the said bonds with interest, did execute to William Lawrence Scott and Kenyon Cox, as trustees, a mortgage, dated the fifteenth day of December, one thousand eight hundred and seventy, of all the lands, tolls, revenues, and property of the company;

And whereas the said company did also, for the purposes of its undertaking, borrow further sums, and did execute to William Dowd and Martin Luther Sykes, junior, as trustees, a second mortgage, dated the fifteenth day of March, one thousand eight hundred and seventy-five, of all its said lands, revenues, and property to secure the issue of second-mortgage bonds of the said company to an amount in the aggregate not exceeding five millions of dollars;

And whereas the said company hath been unable to pay certain interest or other moneys secured under the said bonds, and the same are now in default; and the said company is further indebted in large sums of money for debts contracted in the course of its business, and by way of guarantee for other railway companies with which it is connected, and further moneys are required to be raised and expended in the purchase of additional rolling stock, so as to increase the earnings of the company, and for other purposes of the company;

And whereas, in this condition of the railway company's affairs, a joint committee, composed of three directors of the said company and three other persons representing themselves and other large owners of the said bonds of the company and of the said connecting companies, after full consideration of all the circumstances, and upon the guarantee of the New York Central and Hudson River Railroad Company hereinafter mentioned, did submit a plan of adjustment of the railway company's affairs, which was approved of by the railway company at the meeting of the directors thereof held on the twenty-eighth day of September, one thousand eight hundred and seventy-seven;

And whereas the said plan of adjustment so approved of by the railway company was, and is, as follows, that is to say:

"That the sum of $14,000,000 in new bonds of this company be
69 issued, and that the same be secured by mortgage to be executed by the company to Augustus Schell and Cornelius Vanderbilt, as trustees, upon all the lands, tolls, revenues, and other property of the company:

"That such new bonds shall be coupon bonds, each being for the sum of $1,000, payable on the first day of January, 1908, at the office of the Union Trust Company of New York, in the city of New York, with interest in the mean time payable at the same place semi-annually, on the first days of January and July, at the rate of five per cent. per annum, except during the first three years, when the rate of interest shall be three per cent. per annum. Each bond, in order to be obligatory shall be countersigned by the said Union Trust Company.

"That the interest upon such new bonds is to be guaranteed by the New York Central and Hudson River Railroad Company for and during the period of twenty years from the first day of January, 1878, and in case of any default in payment of such interest by this company the said guarantor shall be entitled to be repaid, with interest, the amount advanced by it for such payment before the payment of any dividend upon shares in the capital stock of this company.

"That the trustees under the respective mortgages following, that is to say:

"(1) Canada Southern Railway Company, dated 15th December, 1870, and chattel mortgages dated 25th October, 1873, 16th December, 1874, 24th February, 1875, 21st February, 1876, and 14th February, 1877,

"(2) Canada Southern Railway Company, second mortgage, dated 15th March, 1875,

"(3) Canada Southern Bridge Company, dated 10th December, 1873,

"(4) Erie and Niagara Railway Company, dated 23rd May, 1873,

"(5) Toledo, Canada Southern and Detroit Railway Company, dated 1st July, 1872, and

"(6) Michigan Midland and Canada Railroad Company, dated 26th May, 1873,

be requested to take such steps, and execute such conveyances as may be necessary for transferring to, and vesting in, new trustees the respective properties held by them upon the trusts contained in the several indentures creating the same.

"That the said issue of new bonds shall be applied for the purposes following, viz:

"(1) The redemption and final cancellation of the first and second mortgage bonds of this company, and all coupons and bonds for interest thereon;

"(2) The purchase for this company of $833,000 in mortgage bonds of the Canada Southern Bridge Company;

"(3) The purchase for this company of the mortgage bonds respectively issued by the Erie and Niagara Railway Company, the Toledo, Canada Southern and Detroit Railway Company, and the Michigan Midland and Canada Railroad Company;

"(4) The settlement of the floating debt and other obligations of the company; and

"(5) For acquiring further equipment, and for such other purposes of the company as the directors may find necessary.

"That the Union Trust Company of New York is hereby constituted the trustee for the custody of the old bonds and coupons from time to time received for new bonds, and such old bonds and coupons shall be held by the said Union Trust Company, and disposed of as follows:

"(1) The old bonds and coupons of the Canada Southern Railway Company shall be held by the said trust company as security for the new issue, pending conversion, and, when said new mortgage shall have become a first lien on the property of the Canada Southern Railway Company, then to be delivered to this company to be cancelled.

"(2) The bonds and coupons of the Canada Southern Bridge Company hall be delivered by the said trust company to the trustees under said new mortgage, to be held by them by way of additional security for the said new issue of bonds, but subject to the right of this company to deal with said bonds or to take proceedings thereon as the directors may think best, reserving always the benefits of any such disposition or proceedings as such additional security in lieu of said bonds; or the said bonds may become the absolute property of this company, in whole or in part, according as this company may resolve not to issue the like amount of its new bonds under said mortgage, or in case this company may at any time think fit to cancel the like amount of such new bonds.

"(3) The bonds and coupons of the Erie and Niagara Railway Company, the Toledo, Canada Southern and Detroit Railway Company, and the Michigan Midland and Canada Railroad Company are, from time to time, as received by the said Union Trust Company, to be delivered over to this company as its own property absolutely.

"That the president of this company is authorized to give from time to time receipts to the holders of such bonds and coupons as agree to this company's proposals and deliver up their said bonds and coupons to the said Union Trust Company, and such receipt shall certify the amount of the new issue to which each holder is entitled, and shall be counter-
71 signed by the Union Trust Company. Each such holder is further required, concurrently with such receipt, to sign his consent to the appointment of the new trustees under the indentures securing his said bonds, and the holders of the first and second mortgage bonds of this company are also further required to give their written assent to an application to the Canadian Parliament for confirming this arrangement.

"That the respective indentures of mortgage under which the bonds of all the several railway companies hereinbefore mentioned (excepting this company) are now secured shall continue in full force, and that the respective indentures under which the first and second mortgage bonds of this company are now also secured shall subsist as valid and existing securities for the said new issue of bonds until the said arrangements for the extinguishment of the said original issues are finally carried out."

And whereas the railway company hath agreed to execute this indenture as and for a first mortgage to further secure the said new issue of bonds, limited to the sum of fourteen millions of dollars in the aggregate;

And whereas the new bonds so to be issued by the said company are to be certified by the countersigning thereof by the Union Trust Company of New York and are each to be of the nature and effect with the guarantee of the New York Central and Hudson River Railroad Company thereon, and according to the form following, that is to say:

"FIRST MORTGAGE. DOMINION OF CANADA. COUPON BOND.

"$1,000 PROVINCE OF ONTARIO. $1,000

"No. . No. .

"The Canada Southern Railway Company is indebted to the bearer hereof in the sum of one thousand dollars, which the said company promises to pay to the bearer hereof on the first day of January, in the year of our Lord one thousand nine hundred and eight, at the office of the Union Trust Company of New York, in the city of New York, United States of America, with interest thereon in the mean time, payable at the same place semi-annually on the first days of January and July of each year, at the rate of five per centum per annum, except during the first three years, when the rate of interest shall be three per centum per annum, on the surrender of the annexed coupons for such interest respectively. This bond is one of a series issued and to be issued to an aggregate not exceeding fourteen millions of dollars, for the security of which the railroad, roadway, lands, tolls, revenues, and other property of the company are mortgaged to Augustus Schell and Cornelius Vanderbilt, of the city of New York, United States of America, as trustees.

72 "This bond and all the rights and benefits arising therefrom shall pass by delivery.

"This bond shall not become obligatory unless it shall have been countersigned by the Union Trust Company of New York.

"In testimony whereof the Canada Southern Railway Company has caused its corporate seal to be hereunto affixed, at St. Thomas, in the province of Ontario, Dominion of Canada, and the same to be attested by the signatures of its president and its secretary, this first day of January, one thousand eight hundred and seventy-eight.

"Countersigned by—

"THE UNION TRUST COMPANY OF NEW YORK.

President.

President.
[L. S.]
Secretary.

"GUARANTEE.

"The New York Central and Hudson River Railroad Company, for and in consideration of the sum of one dollar in hand paid to the said company by the holder hereof, and for other good and valuable considerations, doth hereby covenant and agree with the holder of this bond for the time being that the Canada Southern Railway Company shall and will pay the interest secured by said bond as it shall become due and payable, according to the tenor and conditions of the coupons hereto annexed, but only for and during the period of twenty years from the first day of January, one thousand eight hundred and seventy-eight, and in case of each default in payment of such interest that the New York Central and Hudson River Railroad Company will make such payment.

"In witness whereof the said company has caused to be affixed its corporate seal, at the city of New York, this first day of January, 1878, and the same to be attested by the signatures of its president and its secretary.

President. [L. S.]

Secretary."

73 COUPON 1 to 6.

No..... $15.

—THE—

CANADA SOUTHERN RAILWAY COMPANY.

COUPON FOR FIFTEEN DOLLARS.

Interest payable first day of.....187.... at the Union Trust Company of New York, in the City of New York, on First Mortgage Bond, New Issue, No.....

.... *Treasurer.*

COUPON 7 to 60.

No..... $25.

—THE—

CANADA SOUTHERN RAILWAY COMPANY.

COUPON FOR TWENTY-FIVE DOLLARS.

Interest payable first day of.....188. .. at the Union Trust Company of New York, in the City of New York, on First Mortgage Bond, New Issue, No.....

.....*Treasurer.*

Now, therefore, these presents witness that, for the purpose of securing the payment of the said bonds, being in all the said sum of fourteen millions of dollars, with interest, and for the further consideration of one dollar in hand paid by the parties of the second part to the party of the first part, the receipt whereof is hereby acknowledged, the party of the first part hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said parties of the second part, their heirs, and assigns, and to their successors in the trust, all the following present and future to be acquired estate and property of the said company; that is to say, their railway and undertaking from its terminus in the township of Bertie, near the village of Fort Erie aforesaid, to its terminus at or near the town of Amherstburg, aforesaid; and also to its terminus on the St. Clair River, in the township of Moore aforesaid; and being situate in the following counties, that is to say, Welland, Haldimand, Oxford, Norfolk, Elgin, Kent, Essex, Middlesex, and Lambton, all in the province of Ontario and Dominion of Canada; including the railroad, roadway, and the land occupied thereby, together with the superstructure and tracks thereon, or to be thereon, with all lands at any time acquired in the future for any deviation of the line or for the purposes of the railway, and all rails, ties, and other materials placed, or to be placed or used on the said railway, procured or to be procured therefor, and all bridges, viaducts, culverts, fences, stations, station grounds, buildings, and erections thereon, and all machine-shops and other shops, held or acquired for use in con-
74 nection with said railway or the business thereof; and including also all locomotives, tenders, cars, and other rolling stock or equipment, and all machinery, tools, implements, fuel, and materials for the constructing, operating, repairing, or replacing the said railway, or any part thereof, or any of its equipments or appurtenances, whether now held or at any time hereafter acquired, all of which things are declared to be appurtenances and fixtures of the said railway, and to be included in and to pass by these presents; and also all franchises connected with or relating to said railway or the construction, maintenance, or use thereof, now held or hereafter acquired by the said party of the first part, and all corporate and other franchises which are now or may be hereafter possessed or exercised by the said party of the first part; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, or hereafter to be acquired, and the reversions, remainders, tolls, incomes, rents, issues, and profits therefor, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same,

and any part thereof, with the appurtenances: To have and to hold the said premises and every part thereof unto the said parties of the second part, as joint tenants and not as tenants in common, and the survivor of them, and to the heirs and assigns of such survivor, and to their successors in the trust, to the only proper use and behoof of the said parties of the second part, and of the survivor of them, and of the heirs and assigns of such survivor, and to their successors in the trust, but nevertheless upon the trusts and for the purposes herein expressed, that is to say:

First. Until default shall be made in the payment of principal or interest of the said bonds, or some of them, or until default shall be made in respect to something herein required to be done or kept by the railway company, the railway company shall be suffered and permitted to possess, operate, manage, and enjoy the said railway with its equipments and appurtenances, and to take and use the rents, incomes, profits, tolls, and issues thereof, in the same manner and with the same effect as if this deed had not been executed.

Second. In case default shall be made in the payment of any interest on any of the aforesaid bonds issued, or to be issued, according to the tenor thereof, or in any requirement to be done or kept by the railway company, and if such default shall continue for the period of six months, it shall be lawful for the said trustees, or the survivor of them, or their or his successors or successor, personally or by their or his attorneys or agents, to enter into and upon all and singular the premises hereby conveyed, or intended so to be, and each and every part thereof, and to have, hold, and use the same, operating by their or his superintendents, managers, receivers, or servants, or other attorneys or agents, the said railway, and conducting the business thereof, and making from time to time all repairs and replacements and such useful alterations, additions, and improvements thereto as may seem to them or him to be judicious, and to collect and receive all tolls, freights, incomes, rents, issues, and profits of the same and every part thereof, and, after deducting the expenses of operating the said railway and conducting its business and all of the said repairs, replacements, alterations, additions, and improvements, and all payments which may be made for taxes or assessments, upon the same premises or any part thereof, as well as a just compensation for their or his own services, to apply the moneys arising as aforesaid to the payment of interest in the order in which such interest shall have become due, or shall become due, ratably to the persons entitled thereto; and, after paying all interest which shall have become due, to apply the same to the satisfaction of the principal of the aforesaid bonds which may be at that time due and payable, ratably and without discrimination or preference; and, after the said interest and principal so in default shall have been fully paid, then the said trustees shall restore the possession of the railway, with its franchises and appurtenances, to the said railway company and its successors.

Third. The railway company shall, from time to time and at all times hereafter, and as often as thereunto requested by the trustees, execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in the law for the better assuring unto the trustees and their successors in the trust hereby created upon the trusts herein expressed the said railway, with the equipment and appurtenances hereinbefore mentioned or intended so to be, and all other property and effects whatsoever which may at any time hereafter be acquired for use in connection with the said railway or

any part thereof, and all franchises now held or hereafter acquired, as by the trustees or the survivor of them or their successors, or by their or his counsel learned in the law, shall be reasonably advised, devised, or required.

Fourth. The board of directors of the railway company may, from time to time, by resolution require the said trustees to convey by way of release, or otherwise to discharge from the operation of these presents, any lands acquired or held for the purposes of stations, depots, shops, or other buildings, or premises connected therewith, or which may be held for the supply of fuel, gravel, or other material, or any lands which may have become disused by reason of a deviation in the said line or of a change of the location of any station-house, depot, shop, or other building or premises, or any lands which the said board of directors may deem it expedient to disuse or abandon, by reason of such deviation or change, and which lands respectively shall, by resolution of the said board, be declared to be unnecessary for the purposes and business of the said company, and
76 in every such case the said trustees, when so required, shall execute such releases and discharges accordingly; and it is hereby declared that any lands which may be acquired in substitution for lands so released or discharged, as well as any lands subsequently acquired by the said company for the use and convenience of its railway or in connection therewith, shall be deemed to come within the operation of these presents and to be included therein, and shall be conveyed to and held by the said trustees upon the trusts of these presents; and it is further declared that the said company may, from time to time, sell or dispose of any part of the equipment, rolling stock, machinery, implements, or materials at any time held or acquired for the use or purposes of the said railway, as may, by resolution of the board of directors, be declared to be no longer useful or necessary for the said company's business, and any new or subsequently acquired equipment, rolling stock, machinery, implements, and materials shall come within and be subject to these presents:

Fifth. If the railway company shall well and truly pay the sums of money required to be paid by the said company, and all interest thereon, according to the tenor and effect of the said bonds, and shall well and truly keep and perform all things herein required to be kept or performed by the said company, according to the true intent and meaning of these presents, or if the said bonds and interest payable thereon become in anywise paid or satisfied, then in that case the estate, right, title, and interest of the said parties of the second part, and of their successors in the trust hereby created, shall cease, determine, and become void; otherwise the same shall be and remain in full force and virtue.

Sixth. It is mutually agreed by and between the parties hereto that the word trustees as used in these presents shall be construed to mean the trustees for the time being, whether one or both be original or new, and whenever a vacancy shall exist to mean the survivor or continuing trustee; and such trustee shall, during such vacancy, be competent to exercise all the powers granted by these presents to the parties of the second part; and it is mutually agreed by and between the parties hereto, as a condition on which the parties of the second part have assented to these presents, that the said trustees shall not in any manner be responsible for any default or misconduct of each other; and that the said trustees shall be entitled

to just compensation for all services which they may hereafter render in their trust, to be paid by the said company, and that either of the said trustees or any successor may resign and discharge himself of the trust created by these presents, by notice in writing to the railway company, and to the existing trustee, if there be such, ninety days before such resignation shall take effect, or such shorter notice as they may accept as adequate notice, and upon the due execution by him of the

77 conveyance hereinafter required; and that the said trustees, or either of them, may be removed by the vote of a majority in interest of the holders of the aforesaid bonds then outstanding, the said vote being had at a meeting called by the holders of at least five hundred thousand dollars of said bonds, by advertisement published for six consecutive weeks by insertion once per week in a daily newspaper of large circulation in the cities of New York and Toronto, respectively; and at said meeting said bondholders may vote in person or by proxy, and their said vote shall be attested by an instrument under the hands and seals of the persons or their proxies so voting; and that in case at any time hereafter either of the said trustees, or any trustee hereafter appointed, shall die or resign or be removed, as herein provided, or by a court of competent jurisdiction, or shall become incapable or unfit to act in the said trust, a successor to such trustee shall be appointed by the board of directors of the railway company, and the trustees or trustee so appointed, with any trustee so surviving or continuing, shall thereupon become vested with all the powers, authorities, and estates granted to or conferred upon the parties of the second part by these presents, and all the rights and interests requisite to enable them or him to execute the purposes of this trust, without any further assurance or conveyance, so far as such effect may be lawful, but the surviving or continuing trustee shall immediately execute all such conveyances or other instruments as may be fit or expedient for the purpose of assuring the legal estate in the premises, jointly with himself, to the trustee so appointed; and that, upon the death, resignation, or removal of any trustee, or any appointment in his place in pursuance of these presents, all his powers and authorities by virtue hereof shall cease, and all the estate, right, title, and interest in the said premises of any trustee so dying, resigning, or being removed, shall, if there be a cotrustee surviving or continuing in office, wholly cease and determine, but the said trustee so resigning or being removed shall, on the written request of the new trustee who may be appointed, immediately execute a deed or deeds of conveyance to vest in such new trustee, jointly with the continuing trustee, and upon the trusts herein expressed, all the property, rights, and franchises which may be at that time held upon the said trusts.

Or, in case the directors of the company should fail, after a reasonable time has elapsed, to appoint a successor in any vacancy which may have happened in said trust, application may be made by the surviving or continuing trustee, or by the holders of the said bonds to the aggregate amount of one hundred thousand dollars, to the court of chancery in the province of Ontario, for the appointment of a new trustee or new trustees, as the case may be.

78 And this indenture further witnesseth, and the railway company hereby covenants and agrees with the trustees of these presents, as follows:

One. That the whole of the said issue of new bonds intended to be secured by these presents shall be applied and disposed of only for the respective purposes set forth in the resolutions of the board of directors of this company, in the recitals hereof mentioned, and that the railway company will cause an accurate register to be kept by the trust company of all of such new bonds countersigned by the trust company, and of all applications and dispositions thereof by the said trust company in pursuance of the said recited premises.

Two. That the first and second mortgage bonds of the railway company, and all interest coupons and bonds from time to time redeemed by the trust company, pursuant to the recited plan of adjustment, shall be held by the trust company until it shall be certified to the trust company by the counsel of the railway company that these presents have become a first lien on the property of the railway company, or until the trust company is authorized by the trustees, parties of the second part, and then to deliver such bonds to the railway company, to be cancelled by the trustees of these presents.

Three. That the bonds and coupons of the Canada Southern Bridge Company shall be delivered by the trust company, when received, to the trustees of these presents, to be held by them by way of additional security to these presents for the said new issue of bonds, under and subject to the terms and conditions in the recitals hereof expressed concerning the same.

Four. That the bonds and coupons of the Erie and Niagara Railway Company, the Toledo, Canada Southern and Detroit Railway Company, and the Michigan Midland and Canada Railroad Company, as received from time to time by the trust company, shall be delivered by that company to the railway company, to hold as its own property absolutely, to be dealt with by the directors of the railway company for the purposes and in the interests of the company.

Five. That the respective indentures of mortgage under which the bonds of all the several railway companies (except the Canada Southern Railway Company) in the last preceding paragraph mentioned, and of the Canada Southern Bridge Company, are now secured, shall continue in full force, and that the respective indentures in the recitals mentioned, under which the first and second mortgage bonds of the Canada Southern Railway Company are now also secured, shall exist as valid and subsisting securities for the said new issue of bonds until the said arrangements under the said recited resolutions have been carried out according to their true intent
79 and meaning, and that until then all the bonds and coupons of the said railway companies, including the Canada Southern Railway Company, and of the Canada Southern Bridge Company, shall be retained and held by the Union Trust Company in the mean time, by way of further and additional security that such arrangements shall be carried into effect.

In witness whereof the party of the first part hath caused its corporate seal to be affixed to these presents, at St. Thomas, in the province of Ontario, Dominion of Canada, and the same to be attested by the signatures of its president and its secretary; and the said parties of the second part have hereunto set their respective hands and seals, to testify their acceptance of the said trust, the day and year first above written; and these presents are executed in nine parts for the purpose of registration in the several

counties in the province of Ontario in which the railway and property of the railway company is situate.

[L. S.] THE CANADA SOUTHERN RAILWAY.
JAMES TILLINGHAST, *President.*
NICOL KINGSMILL, *Secretary.*
AUGUSTUS SCHELL. [L. S.]
C. VANDERBILT. [L. S.]

Signed, sealed, and delivered in the presence of—
E. A. WICKES.

CITY OF NEW YORK, *to wit:*

I, Edward Allen Wickes, of the city of New York, in the State of New York, one of the United States of America, merchant, make oath and say:

(1.) That I was personally present and did see the within instrument and thirteen duplicates duly signed, sealed, and executed by Augustus Schell and Cornelius Vanderbilt, the parties thereto of the second part.

(2.) That the said instrument and duplicates were executed at the city of New York aforesaid by the said Augustus Schell and Cornelius Vanderbilt.

(3.) That I know the said parties of the second part.

(4.) That I am a subscribing witness to the said instrument and duplicates.

E. A. WICKES.

Sworn to before me at the city of New York, in the State of New York, this twentieth day of November, in the year of our Lord one thousand eight hundred and seventy-seven.

CHARLES EDWARD TRACY,
A Commissioner for taking affidavits in and for the Courts of Ontario, 34 Vict., Statutes of Ontario, Chap. 14.

80 I certify that the within instrument is duly entered and registered in the registry office for the county of Kent, in book B for the general registry, at 10.09 o'clock a. m. of the 26th day of November, A. D. 1877.

Number 728.

The deputy registrar:

THOMAS C. MACNABB.

I certify that the within instrument is duly entered and registered in the registry office for the county of Haldimand, in book 2 for the general registry, at one o'clock p. m. of the 26th day of November, A. D. 1877.

Number 194.

AGNEW P. FARRELL,
Registrar.

No. 44816.] [R .

I certify that the within instrument is duly entered and registered in the registry office for the county of Norfolk, in book general No. 1 for the county aforesaid, with a duplicate thereof, at twelve o'clock and fifty minutes p. m. of the 26th day of November, A. D. 1877.

Number 18004.

F. L. WALSH,
Registrar.

I certify that the within instrument is duly entered and registered in the registry office of the county of Welland, in book A for the general registry, at one o'clock p. m. of the 26th day of November, A. D. 1877.
Number 154.

HENRY T. ROSE,
Sen. Dep. Registrar.

I certify that the within instrument is duly entered and registered in the registry office of the county of Elgin, in book C for general registry, at 12.21 o'clock p. m. of the 26th day of November, A. D. 1877.
Number 741. Fees, $6.55.

A. McLACHLIN,
Registrar.

I certify that the within instrument is duly entered and registered in the registry office for the county of Lambton, in book B for general registry, at 10 o'clock a. m. of the 26th day of December, A. D. 1877.
Number 479.

JAMES A. TUTTLE,
Deputy Registrar.

81 I certify that the within instrument is duly entered and registered in the registry office for the county of Essex, in book B for general registrations, at 10 o'clock and 30 minutes a. m. of the 26th day of November, A. D. 1877.
Number 274.

VICTOR OUELLETTE,
Deputy Registrar.

No. 71039.]

I certify that the within instrument is duly entered and registered in the registry office of the county of Oxford, in book B for general register, at 10 o'clock a. m. the 26th day of November, A. D. 1877.
Number 480.

C. H. WHITEHEAD,
Deputy Registrar.

I certify that the within instrument is duly entered and registered in the registry office for West Middlesex, in book one for the general registry, at 3.30 o'clock p. m. of the 26th day of November, A. D. 1877.
Number 254.

STEPHEN BLACKBURN,
Registrar.

SCHEDULE B.

Being the scheme of arrangement proposed to the bondholders of the Canada Southern Railway Company and to the bondholders of connecting lines.

At a meeting of the board of directors of the Canada Southern Railway Company, held on the 28th day of September, 1877, a report was

presented from a joint committee consisting of James Tillinghast, Augustus Schell, and E. D. Worcester, on behalf of this company, and John W. Ellis, Sidney Dillon, and Abram B. Baylis, on behalf of the owners of the bonds of the Canada Southern and connected companies, submitting a plan of adjustment of the bonded debt of the companies, which was embodied in a memorandum as follows:

New issue of fourteen million dollars thirty-year bonds, bearing three per cent. interest for three years, and five per cent. thereafter; guaranteed as to interest for twenty years by the New York Central and Hudson River Railroad Company. The first coupon to be payable 1st July, 1878. The new bonds to be exchanged for bonds now outstanding on the basis mentioned below.

82 The mortgage to secure the new bonds to be made upon the Canada Southern road. The bridge bonds already issued shall, as they are taken up, be deposited with the trustees named in the new mortgage, as further security to the holders of the bonds under said mortgage.

		Old bonds outstanding.	New bonds to be issued.
Canada Southern, 1sts	at 100	$8,703,000 00	$8,703,000 00
Canada Southern Bridge, 1sts	" 100	833,000 00	833,000 00
Canada Southern, 2nds	" 31½	2,044,189 39	643,919 65
Erie and Niagara, 1sts	" 50	453,000 00	226,500 00
Toledo, Canada Southern & Detroit, 1sts	" 70	1,407,737 50	985,416 25
Michigan Midland and Canada, 1sts	" 25	262,010 00	65,502 50
		$13,702,936 89	$11,457,338 40
Reserve new bonds for purposes of company			2,542,661 60
			$14,000,000 00

The report of this committee was accepted, and its plan of refunding, as set forth in the foregoing memorandum, was adopted by the board as a basis of an arrangement to be proposed to the bondholders. This plan was subsequently approved and adopted by the board of directors of the New York Central and Hudson River Railroad Company.

For the purpose of carrying out this proposed compromise, the board adopted the following provisions, and directed its executive committee to take the necessary steps to lay them before the bondholders and secure their acceptance of same:

First. That the sum of fourteen million dollars in new bonds of this company be issued, and that the same be secured by mortgage to be executed by the company to Augustus Schell and Cornelius Vanderbilt, as trustees, upon the railroad, roadway, lands, tolls, revenues and other property of the company.

Second. That such new bonds shall be coupon bonds, each being for the sum of one thousand dollars, payable on the 1st day of January, 1908, at the office of the Union Trust Company, of New York, in the city of New York, with interest in the mean time payable at the same place, semi-annually, on the 1st days of January and July, at the rate of five per cent. per annum, except during the first three years, when the rate of interest shall be three per cent. per annum. Each bond, in order to be obligatory, shall be countersigned by the said Union Trust Company.

Third. That the interest upon such new bonds is to be guaranteed by the New York Central and Hudson River Railroad Company for and during the period of twenty years from the 1st day of January, 1878, and in case of any default in payment of such interest by this company, the said guarantor shall be entitled to be repaid, with interest, the amount advanced by it for such payment, before the payment of any dividend upon shares in the capital stock of this company.

83 Fourth. That the trustees under the mortgages of the Canada Southern Railway Company, the Canada Southern Bridge Company, the Erie and Niagara Railway Company, the Toledo, Canada Southern and Detroit Railway Company, and the Michigan Midland and Canada Railroad Company be requested to take such steps and execute such conveyances as may be necessary for transferring to and vesting in new trustees the respective properties held by them upon the trusts contained in the several indentures creating the same.

Fifth. That the said issue of new bonds shall be applied for the purposes following, viz:

1. The redemption and final cancellation of the first and second mortgage bonds of this company, and all coupons and bonds for interest thereon.

2. The purchase for this company of eight hundred and thirty-three thousand dollars in mortgage bonds of the Canada Southern Bridge Company.

3. The purchase for this company of the mortgage bonds respectively issued by the Erie and Niagara Railway Company, the Toledo, Canada Southern and Detroit Railway Company, and the Michigan Midland and Canada Railroad Company.

4. The settlement of the floating debt and other obligations of the company.

5. For acquiring further equipment and for such other purposes of the company as the directors may find necessary.

Sixth. That the Union Trust Company of New York is hereby constituted trustee for the custody of the old bonds and coupons from time to time received for new bonds, and such old bonds and coupons shall be held by the said Union Trust Company and disposed of as follows:

1. The old bonds and coupons of the Canada Southern Railway Company shall be held by the said trust company as security for the new issue pending conversion, and when the said new mortgage shall have become a first lien on the property of the Canada Southern Railway Company, then to be delivered to that company to be cancelled.

2. The bonds and coupons of the Canada Southern Bridge Company shall be delivered by the said trust company to the trustees under said new mortgage, to be held by them by way of additional security for the said new issue of bonds, but subject to the right of this company to deal with said bonds or to take proceedings thereon as the directors may think best, reserving always the benefits of any such disposition or proceedings as such additional security in lieu of said bonds, or the said bonds may become the absolute property of this company, in whole or in part, according as this company may resolve not to issue the like amount of its new bonds under the said mortgage, or in case this company may at any time think fit to cancel the like amount of such new bonds.

84 3. The bonds and coupons of the Erie and Niagara Railway Company, the Toledo, Canada Southern & Detroit Railway Company, and the Michigan Midland and Canada Railroad Company are, from time to time, as received by the said Union Trust Company, to be delivered over to this company as its own property absolutely.

Seventh. That the president of this company is authorized to give, from time to time, receipts to the holders of such bonds and coupons as agree to this company's proposals and deliver up their said bonds and coupons to the said Union Trust Company, and such receipt shall certify the amount of the new issue to which each holder is entitled, and shall be countersigned by the said Union Trust Company. Each holder is further required, concurrently with such receipt, to sign his consent to the appointment of the new trustees under the indenture securing his said bonds; and the holders of the first and second mortgage bonds of this company are also further required to give their written assent to an application to the Canadian Parliament for confirming this arrangement.

Eighth. That the respective indentures of mortgage under which the bonds of all the several railway companies hereinbefore mentioned (excepting this company) are now secured shall continue in full force, and that the respective indentures under which the first and second mortgage bonds of this company are now also secured shall subsist as valid and existing securities for the said new issue of bonds until the said arrangement for the extinguishment of the said original issues is finally carried out.

The executive committee has adopted the form of receipt or certificate to be given bondholders depositing their bonds and coupons with the Union Trust Company in accordance with the seventh section of the foregoing provisions. Upon the issue of such certificate bondholders will be required to deposit, together with their bonds, all coupons, interest bonds, and other evidence of interest unpaid thereon.

Ottawa: Printed by Brown Chamberlin, law printer to the Queen's Most Excellent Majesty.

85 (Indorsed:) U. S. circuit court, so. dist. of New York. William H. Gebhard vs. The Canada Southern Railway Company. Answer. Evarts, Southmayd & Choate, def't's att'ys, 52 Wall street. U. S. circuit court. Filed May 26, 1879. John I. Davenport, clerk.

86 U. S. circuit court, so. dist. New York.

GEBHARD
vs.
CANADA SOUTHERN RAILROAD COMPANY.

Pursuant to the act of Congress in such case provided it is stipulated that this action be tried by the court without a jury.

New York, 18 Dec., 1879.

EVARTS, SOUTHMAYD & CHOATE,
Def't's Att'ys.

PLATT, GERARD & BOWERS,
Pl'ff's Att'ys.

(Endorsed:) C. c. of the U. S., s. d. of N. Y. Wm. H. Gebhard vs. Canada Southern Railway Co. Consent waiving trial by jury. Filed in open court Dec. 18, 1879.

87 *Special findings.*

United States circuit court, southern district of New York.

WILLIAM H. GEBHARD, PLAINTIFF,
vs.
THE CANADA SOUTHERN RAILWAY COMPANY,
defendant.

In this action, tried before me on the 18th day of December, 1879, without the intervention of a jury, by the attorneys of record for the respective parties filing with the clerk a stipulation in writing waiving a jury, I do make the following special findings upon the facts, viz:

First. That the plaintiff is, and always has been, and was at all the times hereinafter mentioned, a citizen and resident of the State of New York.

Second. That the defendant is a foreign corporation, created by and existing under and by virtue of the laws of the dominion of Canada.

88 Third. That on the 20th day of December, 1873, the defendant made and duly issued under its corporate seal its one hundred certain bonds or obligations numbered as follows: 655 to 674 inclusive, 701 to 720 inclusive, 772 to 781 inclusive, and 839 to 888 inclusive, each of which said bonds was for the sum of $105, and they are the bonds in suit in this action, and were received by the plaintiff from the Union Trust Company at the city of New York.

Fourth. That said bonds were in the following form, viz:

No. .] DOMINION OF CANADA. [$105.

PROVINCE OF ONTARIO.

THE CANADA SOUTHERN RAILWAY COMPANY.

Seven per cent. gold interest bond.

The Canada Southern Railway Company promises to pay to the
89 bearer hereof, on the first day of January, 1877, one hundred and five dollars in gold, with interest semi-annually in gold, from January 1st, 1874, at the rate of seven per cent. per annum, according to the annexed coupons, for value received, in coupons falling due January 1st, 1874, July 1st, 1874, and January 1st, 1875, from first-mortgage bond No. of said company, which coupons have been deposited with the Union Trust Company of New York, to be held by the said Union Trust Company of New York in trust, and in case of default of payment of either principal or interest hereof, after its maturity respectively, to be returned to the bearer upon the surrender of this bond and its unpaid coupons; but until such default said deposited coupons are to be held, and are not to be used for foreclosure suit or demand.

Upon payment hereof, principal and interest, the said coupons
90 so deposited are to be cancelled and surrendered by said trustee to said Canada Southern Railway Company.

The principal and interest of this bond are payable at the office of the Union Trust Company of New York.

This bond shall not become obligatory until the certificate hereon shall have been signed by the trustee herein named.

In witness whereof the Canada Southern Railway has caused its corporate seal to be hereunto affixed, at St. Thomas, in the province of Ontario, and this bond to be signed by its president and secretary this 20th day of December, 1873.

, *President.*

[SEAL.] , *Secretary.*

Trustees' certificate.

The Union Trust Company of New York hereby certifies that it has received the three coupons herein named, for which this bond is issued, and holds the same in trust according to the terms hereof.

91 Fifth. That said bonds had each attached thereto certain coupons for the semi-annual interest to become due thereon, which said coupons were in the following form, viz:

No. .] Coupon for 3.67½ dollars,

Being half-yearly interest on interest bond No. , of the Canada Southern Railway Company, payable at the office of the Union Trust Company of New York, on the 1st day of , 187 .

, *Treasurer.*

Sixth. That said bonds were issued to fund interest on one hundred certain other trust-mortgage bonds of said company issued by the defendant to the plaintiff for value, and which said latter bonds were duly issued under the corporate seal of the defendant; were for the sum of one thousand dollars each; were issued on the second day of January, 1871; bore
92 interest at the rate of seven per cent. per annum, and the principal and interest of which said bonds were all by said company made payable at the office of the Union Trust Company of New York, in the city of New York, United States of America.

Said bonds were in the following form:

FIRST MORTGAGE DOMINION OF CANADA. COUPON BONDS.

1,000.] PROVINCE [VIGNETTE] OF ONTARIO. [1,000.

No .] [No .

CANADA SOUTHERN RAILWAY COMPANY.

Know all men by these presents that the Canada Southern Railway Company is indebted to John F. Tracy, or the bearer hereof, in the sum of one thousand dollars, of lawful money of the Dominion of Canada, which the said company promises to pay to John F. Tracy, or the bearer hereof, on the first day of January, in the year of our Lord one thousand
93. nine hundred and six, at the office of the Union Trust Company of New York, in the city of New York, United States of Amer-

ica, with interest thereon in the mean time, in like lawful money, at the rate of seven per cent. per annum, payable at the same place semi-annually, on the first days of January and July of each year, on the surrender of the annexed coupons for such interest. This bond is one of a series issued and to be issued to an aggregate amount not exceeding nine millions of dollars, and is secured by a deed of trust, dated the fifteenth day of December, 1870, duly executed and delivered by the Canada Southern Railway Company to William L. Scott, of the city of Erie, State of Pennsylvania, and Kenyon Cox, of the city of New York, United States of America, trustees, and conveying to them and their successors in the trust the railway of the said company, its lands, tolls, revenues, present and future, property, and effects, franchises, and appurtenances.

94 This bond and all the rights and benefits arising therefrom shall pass by delivery. This bond is convertible into a registered bond at the option of the holder hereof. This bond is subject to the conditions endorsed hereon.

This bond shall not become obligatory unless it shall have been countersigned by the said trustees or their successors in the trust.

In testimony whereof the said company has caused its corporate seal to be hereto affixed at Fort Erie, in the province of Ontario, Dominion of Canada, and the same to be attested by the signatures of its president and secretary, on this second day of January, one thousand eight hundred and seventy-one.

, *President.*
, *Secretary.*

Countersigned by—

Trustees.

95 Coupon No. .

CANADA SOUTHERN RAILWAY COMPANY.

Coupon for thirty-five dollars.

Interest payable 1st day of , 1 , at the Union Trust Company of New York, in the city of New York, on first-mortgage coupon bond No. .
$35.]

Treasurer.

(Endorsed:)

CONDITION.

This bond, at the option of the holder, will be made a sterling bond by application at the agency of the company in New York, or London, England; principal and interest payable at the company's agency in London, England, or in the city of New York, at the rate of two hundred pounds sterling for the principal of the bond and seven pounds sterling for each coupon.

CONDITION.

This bond is subject to be redeemed at par in pursuance of the mortgage, as follows: A sinking-fund will be established by the
96 company by paying into the same, on or before the several days specified below, the several sums below stated opposite such days respectively, and the like amount of bonds will be redeemed out of said sinking-fund upon each of said days respectively. The particular bonds so to be redeemed in each case will be determined by lot in pursuance of the mortgage, and the result of the lot in each case will be published in New York and London, England, by advertisement in a daily newspaper of each of said cities, at least thirty days before the time of redemption; from which time interest on the bonds designated shall cease to accrue, namely:

Time of redemption.	Am't of bonds to be redeemed.
January 1, 1875	$82,000
January 1, 1876	87,000
January 1, 1877	93,000
January 1, 1878	100,000
January 1, 1879	107,000
January 1, 1880	114,000
97 January 1, 1881	$122,000
January 1, 1882	131,000
January 1, 1883	140,000
January 1, 1884	150,000
January 1, 1885	160,000
January 1, 1886	172,000
January 1, 1887	184,000
January 1, 1888	196,000
January 1, 1889	210,000
January 1, 1890	225,000
January 1, 1891	241,000
January 1, 1892	257,000
January 1, 1893	275,000
January 1, 1894	295,000
January 1, 1895	315,000
January 1, 1896	337,000
January 1, 1897	361,000
January 1, 1898	386,000
January 1, 1899	413,000
January 1, 1900	442,000
January 1, 1901	473,000
January 1, 1902	506,000
January 1, 1903	542,000
January 1, 1904	580,000
January 1, 1905	620,000
January 1, 1906	684,000
	$9,000,000

98 These bonds were part of the issue of $8,703,000 of bonds secured by a first mortgage of all the property of said company, as in defendant's answer set forth, duly issued in accordance with the resolutions of the shareholders and directors of the said company to that effect.

Seventh. That the defendant, prior to the 31st day of December, 1873, became unable to pay the interest or other money secured under these bonds, and at the same time was further indebted in large sums of money. And the defendant did, on or about the 20th day of December, 1873, make and issue to the holders of the coupons representing interest on the said first-mortgage bonds, certain bonds for the sum of $105 dollars each (of which the bonds in suit, are a part), in accordance with the following resolutions of the directors of the defendant company, passed on or about the 16th day of January, 1873:

"Resolved, That the holders of this company's first-mortgage bonds, both registered and coupon, be requested to fund the three instal-
99 ments of interest falling due January 1st, 1874, July 1st, 1874, and January 1st, 1875, into new and coupon bonds of this company in the following form:

(Reciting the form of the bonds.)

"And further resolved, That the president, secretary, and treasurer of this company be, and are hereby, authorized to execute such bonds under the seal of the company.

"Resolved, That the Union Trust Company of New York be appointed trustee for the execution of the trust mentioned in said bonds, and the executive officers of this company are hereby authorized to issue and deliver such bonds to such trustee for the purpose of such trust."

Eighth. That certain of these bonds so issued as aforesaid, being the bonds in suit, were delivered to the plaintiff at the Union Trust Company, in the city of New York, in exchange for certain interest coupons of the above described first-mortgage bonds, and on receiving these said bonds the plaintiff assigned to the said Union Trust Company all his right
100 and claim in or to the said interest coupons, by assignments regularly filled up and executed, of which the following is a copy, the blanks having been first properly filled up:

"Received, New York, 1874, from the Canada Southern Railway Company, interest bonds of said company numbered No. , each such bond being for $105 in gold, in consideration whereof the undersigned assigns unto the Union Trust Company of the city of New York, as trustee, for the purposes and upon the terms and conditions in said interest bond mentioned all and singular the demands for the three instalments of interest next hereafter severally accruing upon the first-mortgage bond of said company numbered , and registered in the name of the undersigned, to wit, the interest accruing on the first days of January and July, in the year 1874, and on the first day of January, 1875."

And upon the signing by the plaintiff of such assignment the Union Trust Company thereupon stamped upon each bond, the interest of
101 which had been so assigned, the following words, duly signed by their president:

"The interest upon this bond payable January 1, 1874, July 1, 1874, & Jan'y, 1875, has been assigned to the undersigned as trustee.

"UNION TRUST COMPANY OF NEW YORK,
"By , *President.*"

Ninth. That the defendant has not paid the principal of said one hundred bonds of one hundred and five dollars each, which became due and payable at the city of New York on the first day of January, 1877, and of the coupons for interest thereon which became due the first day of July, 1875, the first day of January, 1876, the first day of July, 1876, and the first day of January, 1877, otherwise than by the tender of the new securities under the new mortgage hereinafter referred to, issued under the act of the Parliament of Canada hereinafter set forth, properly applicable to the redemption of said bonds and coupons.

Tenth. That payment of said principal and interest coupons has been duly demanded and refused.

Eleventh. That the plaintiff is the lawful owner and holder of said bonds.

Twelfth. That there was due on the face of said one hundred bonds, as of the eighteenth day of December, 1879, for principal and interest, the sum of fourteen thousand five hundred and thirty-three $\frac{54}{100}$ dollars.

102 Thirteenth. That after the issuance of all the aforesaid bonds the defendant being unable to pay the interest due on the aforesaid and other bonds, a joint committee, composed of three directors of the defendant's company and three other persons, holders of bonds of said company and representing various large holders of said bonds of said company, but not representing the plaintiff, after full consideration of all the circumstances, and upon the guaranty of the New York Central and Hudson River Railroad Company, hereinafter referred to, submitted to the defendant company, and to the said bondholders, a scheme of arrangement of the affairs of the defendant, which was approved of by the defendant at a meeting of the directors thereof, held on the 28th day of September, 1877.

Fourteenth. That said scheme of arrangement was as follows:

103 "Scheme of arrangement proposed to the bondholders of the Canada Southern Railway Company and to the bondholders of connecting lines.

"At a meeting of the board of directors of the Canada Southern Railway Company held on the 28th day of September, 1877, a report was presented from a joint committee, consisting of James Tillinghast, Augustus Schell, and E. D. Worcester, in behalf of this company, and John W. Ellis, Sidney Dillon, and Abram B. Baylis, on behalf of the owners of the bonds of the Canada Southern and connected companies, submitting a plan of adjustment of the bonded debt of the companies, which was embodied in a memorandum, as follows:

"New issue of fourteen million dollars, thirty-year bonds, bearing three per cent. interest for three years, and five per cent. thereafter,
104 guaranteed as to interest for twenty years by the New York Central and Hudson River Railroad Company. The first coupon to be

payable 1st July, 1878. The new bonds to be exchanged for bonds now outstanding on the basis mentioned below.

"The mortgage to secure the new bonds to be made upon the Canada Southern Road. The bridge bonds already issued shall as they are taken up be deposited with the trustees named in the new mortgage, as further security to the holders of the bonds under said mortgage.

	Old bonds outstanding.	New bonds to be issued.
Canada South'n, 1sts, @ 100	8,703,000	8,703,000
Canada South'n Bridge, 1sts, @ 100	833,000	833,000
Canada South'n, 2nds, @ 31½	2,044,189 39	643,919 65
Erie & Niagara, 1sts, @ 50c	453,000	226,500
Toledo, Canada Southern & Detroit, 1sts, @ 70	1,407,737 50	985,416 25
Michigan Midland & Canada, 1sts, @ 25	262,010	65,502 50
	$13,702,936 89	$11,457,338 40
Reserve new bonds for purposes of company		2,542,661 60
		$14,000,000 00

105 Fifteenth. That thereupon the board of directors of defendant adopted the following provisions:

"First. That the sum of fourteen million dollars in new bonds of this company be issued, and that the same be secured by mortgage to be executed by the company to Augustus Schell and Cornelius Vanderbilt, as trustees, upon the railroad, roadway, lands, tolls, revenues, and other property of the company.

"Second. That such new bonds shall be coupon bonds, each being for the sum of one thousand dollars, payable on the 1st day of January, 1908, at the office of the Union Trust Company of New York, in the city of New York, with interest in the mean time payable at the same place semi-annually, on the 1st days of January and July, at the rate of five per cent. per annum, except during the first three years, when the rate
106 of interest shall be three per cent. per annum. Each bond, in order to be obligatory, shall be countersigned by the said Union Trust Company.

"Third. That the interest upon such new bonds is to be guaranteed by the New York Central and Hudson River Railroad Company for and during the period of twenty years from the 1st day of January, 1878, and in case of any default in payment of such interest by this company the said guarantor shall be entitled to be repaid with interest the amount advanced by it for such payment before the payment of any dividend upon shares in the capital stock of this company.

"Fourth. That the trustees under the mortgages of the Canada Southern Railway Company, the Canada Southern Bridge Company, the Erie and Niagara Railway Company, the Toledo, Canada Southern and Detroit Railway Company, and the Michigan Midland and Canada Railroad
107 Company be requested to take such steps and execute such conveyances as may be necessary for transferring to and vesting in new trustees the respective properties held by them upon the trusts contained in the several indentures creating the same.

"Fifth. That the said issue of new bonds shall be applied for the purposes following:

"1. The redemption and final cancellation of the first and second mortgage bonds of this company and all coupons and bonds for interest thereon.

"2. The purchase for this company of eight hundred and thirty-three thousand dollars in mortgage bonds of the Canada Southern Bridge Company.

"3. The purchase for this company of the mortgage bonds respectively issued by the Erie and Niagara Railway Company, the Toledo, Canada Southern and Detroit Railway Company, and the Michigan Midland and Canada Railroad Company.

108 "4. The settlement of the floating debt and other obligations of the company.

"5. For acquiring further equipment, and for such other purposes of the company as the directors shall find necessary.

"Sixth. That the Union Trust Company of New York is hereby constituted trustee for the custody of the old bonds and coupons from time to time received for new bonds, and such old bonds and coupons shall be held by the said Union Trust Company and disposed of as follows:

"1. The old bonds and coupons of the Canada Southern Railway Company shall be held by the said trust company as security for the new issue pending conversion, and when the said new mortgage shall have become a first lien on the property of the Canada Southern Railway Company then to be delivered to the company to be cancelled.

109 "2. The bonds and coupons of the Canada Southern Bridge Company shall be delivered by the said trust company to the trustees under said new mortgage, to be held by them by way of additional security for the said new issue of bonds, but subject to the right of this company to deal wtih said bonds or to take proceedings thereon as the directors may think best, reserving always the benefits of any such disposition or proceedings as such additional security in lieu of said bonds; or the said bonds may become the absolute property of this company, in whole or in part, according as this company may resolve not to issue the like amount of its new bonds under the said mortgage, or in case this company may at any time think fit to cancel the like amount of such new bonds.

"3. The bonds and coupons of the Erie and Niagara Railway Com-
110 pany, the Toledo, Canada Southern, and Detroit Railway Company, and the Michigan Midland and Canada Railroad Company are from time to time as received by the said Union Trust Company to be delivered over to this company as its own property absolutely.

"Seventh. That the president of this company is authorized to give from time to time receipts to the holders of such bonds and coupons as agree to this company's proposals, and deliver up their said bonds and coupons to the said Union Trust Company, and such receipt shall certify the amount of the new issue to which each holder is entitled, and shall be countersigned by the said Union Trust Company. Each holder is further required, concurrently with such receipt, to sign his consent to the appointment of the new trustees under the indenture securing his bonds, and the holders of the first and second mortgage bonds of the company are also further re-
111 quired to give their written assent to an application to the Canadian Parliament for confirming this arrangement.

"Eighth. That the respective indentures of mortgage under which the bonds of all the several railway companies hereinbefore mentioned (except-

ing this company) are now secured shall continue in full force, and that the respective indentures under which the first and second mortgage bonds of this company are now also secured shall subsist as valid and existing securities for the said new issue of bonds, until the said arrangement for the extinguishment of the said original issues is finally carried out.

"The executive committee has adopted the form of receipt or certificate to be given bondholders depositing their bonds and coupons with the Union Trust Company in accordance with the seventh section of the foregoing provisions. Upon the issue of such certificate bondholders
112 will be required to deposit, together with their bonds, all coupons, interest bonds, and other evidences of interest unpaid thereon."

Sixteenth. That thereupon the indenture of mortgage for the purpose of securing the said proposed new issue of first-mortgage bonds was, on the thirty-first day of October, 1877, executed by the defendant, whereby the defendant conveyed its road and property to Augustus Shell and Cornelius Vanderbilt, trustees, as mentioned in said scheme, of which mortgage a copy is appended to the act of Parliament hereto annexed marked "A."

Seventeenth. This scheme was approved and adopted by the board of directors of the New York Central and Hudson River Railroad Company at a meeting of the board held on the 28th day of September, 1877, when the following resolutions were adopted:

"Resolved, That the basis for adjusting the Canada Southern Railway matter, as set forth in the memorandum of the committee, just
113 read, be, and is hereby, approved and adopted, and that the company hereby agrees to guaranty an issue of bonds therein contemplated to the extent therein proposed.

"Resolved, That such guaranty expressed in suitable form be put upon the proposed issue of Canada Southern Railway Company's bonds, and that the president and the secretary of this company be, and they are hereby, authorized to execute such guaranty on behalf of this company and under its seal.

"Resolved, That it be referred to the executive committee to have prepared, and that the president be, and he is hereby, authorized to execute, under the seal of the company, such an agreement with the Canada Southern Railway Company as may be necessary to carry these resolutions into effect."

And on the twenty-fifth day of February, 1878, the New York Central and Hudson River Railroad Company duly made and executed, under their corporate seal, an agreement, whereby it was covenanted that
114 the New York Central and Hudson River Railroad Company should and would from time to time, when requested so to do, execute under its corporate seal upon each of the said bonds to form the new issue a guaranty for the interest to accrue thereon as proposed in said scheme.

Eighteenth. That the holders of the bonds of the class held by the plaintiff to the extent of over three-fourths in number of bonds, and also the holders of the second-mortgage bonds aforesaid to the extent of over three-fourths in number of bonds, did assent in writing to said scheme, and deposited and surrendered their bonds and coupons with the said Union Trust Company to carry the same into effect.

Nineteenth. That the said scheme of arrangement was, on the 3rd day of January, 1878, at a special general meeting of the shareholders of the

115 Canada Southern Railway Company, specially called on that day for that purpose, assented to by the holders of shares in the aggregate to the number of 108,132 shares out of the total capital stock of 150,000 shares, and being more than two-thirds of the whole number of shares.

Twentieth. That the plaintiff, though at all the times aforesaid the owner and holder of the thirty bonds in suit, and during all the aforesaid times the owner and holder of the bonds, for the interest on which the bonds in suit were issued, never assented to said scheme, nor did he, or any person on his behalf, or having at any time any right or claim to the bonds in suit, for interest on which the bonds in suit were issued, ever assent thereto.

Twenty-first. That thereafter, and on the 16th day of April, 1878, the said defendant submitted said scheme of reorganization to the Par-
116 liament of the Dominion of Canada, and the said Parliament, upon due consideration thereof, duly passed an act entitled "The Canada Southern Arrangement Act, 1878," a copy whereof is hereto annexed, marked "A."

Twenty-second. That on or about the fifth day of June, 1878, the guaranty of the New York Central and Hudson River Railroad Company, mentioned in the said scheme of arrangement and in the said act of Parliament was duly approved at a special general meeting of the shareholders thereof called for that purpose, and that a certificate to that effect of the security of such company, was, on the 28th day of June, in the year 1878, published in the Canada Gazette, as by said act required.

Seventy-third. That the defendant, since the passage of said act,
117 has been at all times ready and willing to issue and deliver to the plaintiff in exchange for and upon the surrender of the bonds and coupons sued on, the full number of the new first-mortgage bonds, to which he, as the holder of the bonds and coupons sued on is entitled to receive upon the redemption thereof, as provided by said act and scheme, and made due tender thereof upon the trial.

And upon the special facts so found, I do make the following as a

CONCLUSION OF LAW AND GENERAL FINDING.

That the plaintiff is entitled to judgment against the defendant for the amount herein-above found due, to wit, the sum of fourteen thousand five hundred and thirty-three $\frac{54}{100}$ dollars ($14,533.54) with interest from the 18th day of December, 1879.

WM. J. WALLACE,
District Judge.

(Here follows pamphlet marked "A," Canada Southern Arrangement Act, 1878, pp. 118–142, which appears at page 60.)

143 (Endorsed:) U. S. circuit court, southern dist. of New York. Wm. H. Gebhard vs. The Canada Southern R'y Co. Proposed special findings. Evarts, Southmayed & Choate, def't's att'ys, 52 Wall Street, New York. U. S. circuit court. Filed Feb'y 25, 1880. John I. Davenport, clerk.

144 Circuit court of the United States for the southern district of New York.

WILLIAM H. GEBHARD, pl'ff,
against
THE CANADA SOUTHERN RAILWAY COMPANY, defendant.

This cause having been tried before the honorable William J. Wallace, one of the judges of this court, trial before the jury having been waived by written stipulation filed in open court, and the said judge having duly made and filed his special findings of fact and conclusions of law, wherein and whereby he finds and decides that the plaintiff is entitled to judgment against the defendant for the sum of fourteen thousand five hundred
145 thirty-three dollars and fifty-four cents, with interest from the eighteenth day of December, eighteen hundred and seventy-nine, which interest to the date hereof amounts to one hundred and ninety-seven dollars and four cents; and the said plaintiff's costs having been adjusted at the sum of eighty-six dollars and fifty-five cents:

Now, on motion of John M. Bowers, counsel for the plaintiff, it is adjudged that the plaintiff, William H. Gebhard, recover of the Canada Southern Railway Company the sum of fourteen thousand seven hundred and thirty dollars and fifty-eight cents, principal and interest, together with eighty-six dollars and fifty-five cents, costs and disbursements, amounting in the whole to fourteen thousand eight hundred and seventeen
146 dollars and thirteen cents, and that said plaintiff have execution therefor against the defendant.

Judgment signed this 5th day of March, A. D. 1880.

J. M. DEUEL, *Dep'y Cl'k.*

(Endorsed:) U. S. circuit court, s. d. of New York. William H. Gebhard ag'st The Canada Southern Railway Company. Judgment. Platt, Gerard & Bowers. U. S. circuit court. Filed Mar. 5, 1880. John I. Davenport, cl'k.

147 United States circuit court, southern district of New York.

WILLIAM H. GEBHARD
against
THE CANADA SOUTHERN RAILWAY COMPANY.

WALLACE, J.

The plaintiff sues upon certain obligations executed and issued by the defendant, representing installments of interest due and unpaid upon the defendant's issue of first-mortgage bonds. The case for convenience may be considered as though the action were brought to recover several installments of interest due on the first day of January, 1877, upon the first-mortgage bonds of the defendant. These bonds were executed and issued in Canada, but by their terms were payable at the city of New York.
148 The defendant is a Canadian corporation, and insists in defense that it is discharged from payment of these bonds by virtue of an

act of the Parliament of the Dominion of Canada, passed in April, 1878, whereby the defendant was authorized to issue new bonds, payable in thirty years, in substitution of its first-mortgage bonds, and bearing a lower rate of interest. This act declares that the assent of the holders of the first-mortgage bonds shall be deemed to have been given to the substitution of the new bonds. The plaintiff in fact never assented to the substitution of the new bonds in the place of the first bonds.

On first impression the defense seems an extraordinery one. It rests upon the theory that the original bonds, having been issued in Canada, are contracts controlled, as respects the obligation and its discharge, by the law of Canada, and that the Canadian Parliament in the exercise of its unlimited powers has discharged or modified the obligation of the contract, and
149 that even though this be an arbitrary or unjust act, it is conclusive upon the rights of the parties. Several general propositions applicable to the case are elementary. The law of the place of the contract determines the nature, the obligation, and interpretation of the contract. But when the contract is to be performed in a different place to that in which it is made, the law of the place of performance, in conformity to the presumed intention of the parties, determines the nature, obligation, and interpretation of the contract. A defense or discharge good by the law of the place of the contract is good wherever the contract is sought to be enforced; but when the place of performance is not the place where the contract was made the defense or discharge is valid or invalid according to the law of the place of performance. The doctrine that a defense or discharge good by the law of the place of the contract is good everywhere is sub-
150 ject to several qualifications, one of which is that the discharge or defense must not be of such character that it would conflict with the duty of the State where it is sought to be enforced towards its own citizens to recognize it. The laws of a State have no extraterritorial vigor, and are enforced by other States only upon considerations of comity, and these always yield to those higher considerations which demand of every State the protection of its own citizens against the unwarrantable acts of a foreign sovereignty. These familiar general propositions require no citation from the authorities to support them. Applying them here the defense cannot succeed.

The plaintiff sues upon a contract which was made in Canada, but was to be performed in the State of New York, the place of payment being the place of performance; and a discharge of the obligation which derives its vitality solely from the authority
151 of a foreign sovereignty is of no more effect than would be the case if New York were the place where the contract was made. One of the most common instances in illustration of the rule is where the defense of usury is interposed in an action brought here upon an obligation made in a foreign State and bearing a higher rate of interest than is permitted by the laws of that State. When the obligation is payable here, the cases all agree that the usury laws of the foreign State have no application.

Another class of cases more analogous to the present, because they involve the effect of an ex post facto discharge of the obligation, is where a discharge in bankruptcy has been obtained under the laws of the State where the contract was made. Such a discharge is not a defense when the

place of performance of the obligation is in a different State. The
152 question has frequently been considered by the Supreme Court of the United States, and although generally discussed in connection with constitutional questions, it has been ruled, with the concurrence of all the judges, that, irrespective of other considerations, the discharge is inoperative when obtained in a different State from that where the debt was payable, because the contract and its obligations cannot be affected by the legislation of other States. (See opinions of Grier, Daniel, Woodbury, JJ., in Cook vs. Moffat, 5 How., 295.)

The decision of the present case may properly rest upon this ground alone, but if the obligations in suit were Canadian contracts the defense would be untenable. The act of the Canadian Parliament is an attempt to impair and destroy the obligation of a contract. Undoubtedly it was supposed, in view of the financial embarrassments of the defendant, that the new obligations authorized by the act would be acceptable
153 to the holders of the original bonds, and would be of equal if not of greater value. But the plaintiff was entitled to the money due by the terms of his bonds, and any legislative act which attempts to deprive him of it by compelling him to accept something different violates fundamental principles of justice, and is in effect an arbitrary connfiscation of the plaintiff's property. Although by the theory of the British constitution Parliament is omnipotent, the jurists and statesmen of England have denied its right to transcend the boundaries which confine the discretion of Parliament within the ancient landmarks.

When it was proposed by act of Parliament to impair vested property rights by remodelling the charter of the East India Company, in 1783, the attempt was denounced by Lord Thurlow and Mr. Pitt "as a total subversion of the law and constitution of the country," and some
154 of the greatest jurists and judges of England have declared that an act of Parliament against common right and natural equity is void. (Angel on Corporations, § 767.)

In our own country we regard such acts as so subversive of natural rights as not to be within the authority delegated to the legislative department of the Government. It is sometimes supposed that because the Constitution of the United States prohibits the States from passing such laws, and is silent as to the United States, the authority to pass them resides in Congress by implication. This is an erroneous assumption. As said by Nelson, J., 13 Wend., 328, "It is now considered an universal and fundamental proposition in every well-regulated and properly administered government, whether embodied in a constitutional form or not, that private property cannot be taken for private purposes, nor for public without just compensation, and that the obligation of contracts cannot be ab-
155 rogated or essentially impaired. These and other vested rights of the citizen are held sacred and inviolable, even against the plenitude of power of the legislative department." The same views are expressed by the learned author of Cooley's Constitutional Limitations (p. 176), as follows: "However proper and prudent it may be expressly to prohibit those things which are not understood to be within the proper attributes of legislative power, such prohibition can never be essential when the extent of the power apportioned to the legislative department is found, upon examination, not to be broad enough to cover the obnoxious author-

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155 rogated or essentially impaired. These and other vested rights of the citizen are held sacred and inviolable, even against the plenitude of power of the legislative department." The same views are expressed by the learned author of Cooley's Constitutional Limitations (p. 176), as follows: "However proper and prudent it may be expressly to prohibit those things which are not understood to be within the proper attributes of legislative power, such prohibition can never be essential when the extent of the power apportioned to the legislative department is found, upon examination, not to be broad enough to cover the obnoxious author-

ity. The absence of such prohibition cannot by implication confer power." A contract is property; to destroy it partially is to take it; and to do this by arbitrary legislative action, is to do it without due process of law. (Sinking Fund Cases, 99 U. S., 746–'7.)

If any of our own States had passed such an act as the one
156 under consideration, it would have been the duty of the courts of that State to treat it as an unlawful exercise of power; and certainly it cannot be expected that this court will tolerate legislation by a foreign state which it would not sanction if passed here, and which, if allowed to operate, would seriously prejudice the rights of a citizen of this State.

Comity can ask no recognition of such unjust foreign legislation, and the case falls under the qualification of the general rule, which prescribes that when the foreign law is repugnant to the fundamental principle of the lex fori it will be ignored.

Judgment is ordered for plaintiff.

157 (Indorsed:) Filed Jan'y 24, 1880.

158 *Bill of exceptions.*

United States circuit court, southern district of New York.

WILLIAM H. GEBHARD
against
THE CANADA SOUTHERN RAILWAY COMPANY.

And afterwards, to wit, at a term of the circuit court of the United States held at the city of New York in and for the southern district of New York, in the second circuit, on the eighteenth day of December, one thousand eight hundred and seventy-nine, before the honorable William J. Wallace, one of the judges of the said circuit court, the issues so joined between the said parties as aforesaid came on to be tried before the said judge without a jury, according to a stipulation of the parties filed with the clerk waiving a jury, as by the act of Congress provided;
159 at which day came as well the said plaintiff as the said defendant, by their respective attorneys as aforesaid, gave evidence which established the several findings of fact hereinafter mentioned; and upon the trial of said issues, after hearing the proofs and arguments of the parties, the court found the findings of fact and conclusion of law which are of record in this cause, and which are here referred to with like effect as if they were again fully and at large set forth in this bill of exceptions.

The said conclusion of law, which was so found by the court upon the said findings of fact, was as follows:

"That the plaintiff is entitled to judgment against the defendant for the amount herein above found due, to wit, the sum of fourteen thou-
160 sand five hundred and thirty-three $\frac{54}{100}$ dollars ($14,533.54), with interest from the eighteenth day of December, 1879."

To which conclusion of law, and to each and every part whereof, the defendant duly excepted, upon the ground that the facts found were not sufficient to support the said conclusion or the judgment to be entered thereon.

And inasmuch as the said exception to such conclusion does not otherwise

appear, the said counsel for the defendant did propose this his exception in writing to the said conclusion, and request the judge to sign and put his seal to this bill of exceptions, containing the said conclusion and said exception thereto as aforesaid, according to the form of the statute in such case made and provided; and thereupon the said judge of the said
161 court, at the request of the said counsel for the defendant, did sign and put his seal to this bill of exceptions, pursuant to the said statute and the rules and practice of the said court, this 2d day of March, A. D. 1880.

W. J. WALLACE, [L. S.]
U. S. District Judge.

(Endorsed:) United States circuit court, southern dist. of New York. William H. Gebhard vs. The Canada Southern R'way Co. Bill of exceptions. Evarts, Southmayed & Choate, def't's att'ys, 52 Wall street, New York. U. S. circuit court. Filed Mar. 5, 1880. John I. Davenport, clerk.

162 Supreme Court of the United States.

THE CANADA SOUTHERN RAILWAY COMPANY, plaintiff in error,
against
WILLIAM H. GEBHARD, DEFENDANT IN ERROR.

Of October term, in the year of our Lord one thousand eight hundred and eighty.

Afterwards, to wit, on the second Monday of October term, 1880, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said The Canada Southern Railway Company, by Evarts, Southmayed and Choate, its attorneys, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

163 That the court found and decided as a conclusion of law that the plaintiff was entitled to judgment against the defendant for the sum of fourteen thousand five hundred and thirty-three dollars fifty-four cents, with interest from the eighteenth day of December, eighteen hundred and seventy-nine; whereas the facts found were not sufficient to support the said conclusion or the judgment entered thereon, and the said The Canada Southern Railway Company prays that the judgement aforesaid may be reversed, annulled, and altogether held for naught, and that it may be restored to all things which it has lost by occasion of the said judgment.

EVARTS, SOUTHMAYD & CHOATE,
Att'ys for Pl'ff in Error.

(Endorsed:) Supreme Court of the United States. The Canada Southern Railway Company, plaintiff in error, against William H. Gebhard,
164 defendant in error. Assignment of error. Evarts, Southmayd & Choate, att'ys for pl'ff in error, 52 Wall st., N. Y. U. S. circuit court. Filed Aug. 2d, 1880. John I. Davenport, clerk.

165 *Bond for damages and costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

WILLIAM H. GEBHARD
vs.
THE CANADA SOUTHERN RAILWAY COMPANY.

Know all men by these presents that we, The Canada Southern Railway Company and William H. Vanderbilt, are held and firmly bound unto the above-named William H. Gebhard in the sum of thirty thousand dollars, to be paid to the said William H. Gebhard, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, representatives, successors, and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated the tenth day of March, in the year of our Lord one thousand eight hundred and eighty.

Whereas the above named the Canada Southern Railway Company hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named railway company shall prosecute its said writ of error to effect, and answer all damages and costs if it fail to make its said plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[SEAL OF CO.] THE CANADA SOUTHERN RAILWAY CO.,
By W. H. VANDERBILT, *President.*
W. H. VANDERBILT. [L. S.]

Sealed and delivered, and taken and acknowledged, this 10th day of March, 1880, before me.

[L. S.] D. W. PARDEE,
Notary Public, Kings Co. (certified in N. Y. Co.).

166 UNITED STATES OF AMERICA,
Southern District of New York, ss:

William H. Vanderbilt, being duly sworn, doth depose and say that he is worth the sum of sixty thousand dollars over and above all his just debts and liabilities.

W. H. VANDERBILT.

Sworn to this tenth day of March, A. D. 1880, before me.
D. W. PARDEE,
Notary Public, Kings Co. (certified in N. Y. Co.).

The foregoing bond is approved.
March 12th, 1880.

SAM'L BLATCHFORD,
Circuit Judge.

(Indorsed:) U. S. circuit court. William H. Gebhard, def't in error, ads. The Canada Southern Railway Company, plaintiff in error. Bond for damages and costs on writ of error. Evarts, Southmayd & Choate, att'ys for pl'ff in error. U. S. circuit court. Filed Mar. 12, 1880. John I. Davenport, clerk.

167 UNITED STATES OF AMERICA, *ss:*

To William H. Gebhard, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October eighteen hundred and eighty, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein The Canada Southern Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated March 12th, 1880.

SAM'L BLATCHFORD,
Circuit Judge.

168 Due & timely service of within citation is hereby admitted this 12th day of March, 1880.

PLATT, GERARD & BOWERS,
Attorneys for Defendant in Error.

(Indorsed:) A. 268. U. S. Supreme Court. The Canada Southern Railway Company, plaintiff in error, against William H. Gebhard, defendant in error. Citation. Evarts, Southmayd & Choate, attorneys for pl'ff in error, 52 Wall street.

(Stamp:) U. S. circuit court. Filed Mar. 13, 1880. John I. Davenport, clerk.

(Indorsement on cover:) No. 73. The Canada Southern Railway Company, plaintiff in error, vs. William H. Gebhard, S. New York, C. C. U. S. Filed 8th October, 1880.